

HINDU LAW

HINDU LAW

AS ADMINISTERED IN BRITISH INDIA.

BY

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SECOND IMPRESSION

CALCUTTA AND SIMLA

THACKER, SPINK & CO.

LONDON: W. THACKER & CO., 2, CREED LANE, E.C.

1913

PRINTED BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

PREFACE.

THE present work includes the material contained in my works on "Hindu Family Law" and "The Hindu Law of Inheritance," which I have revised and brought up to date. I have added a chapter on the Law of Religious and Charitable Endowments, and have incorporated in the chapter on Wills some observations on the Law of Gifts.

I must again express my special and great obligation to the learned works of Sir Gooroo Dass Bauerjee, Pundit Rajkumar Sarvadhikari, Dr. Jogendra Nath Bhattacharya, Sastri G. C. Sircar, and Mr. J. C. Ghose. I have made frequent reference to them, and would recommend all who are interested in the subject to study those works at first hand. Without the help of works such as those it is impossible for one who is ignorant of Sanskrit to grasp sufficiently the real principles of Hindu law. I have also frequently referred to Mr. Mayne's well-known book on "Hindu Law." I desire also to express my obligation to Mr. R. H. Macleod, late of the Indian Civil Service, who has assisted me with valuable suggestions.

E. J. TREVELYAN.

OXFORD,
April, 1912.

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LIST OF ABBREVIATIONS AND AUTHORITIES.

- Agra. Agra High Court Reports, 1866-1868. Agra.
- All. Indian Law Reports, Allahabad Series, 1875 to date. Allahabad.
- Ameer Ali and Woodroffe's Indian Evidence Act. Calcutta.
- Banerjee's Law of Marriage. The Hindu Law of Marriage and Stridhana, by Sir Gooroodass Banerjee, M.A., D.L. 2nd Ed. 1896, Calcutta.
- Bell and Taylor. Reports. Calcutta.
- Ben. Sel. R. Reports of Cases determined in the Court of Sudder Dewanny Adawlut, by W. H. Macnaghten, 1791-1848. Calcutta. New Edition. 1867.
- Ben. S. D. A. Bengal Sudder Dewanny Adawlut Reports, 1845-1862. Calcutta.
- Bhattacharya's Hindu Law. Commentaries on Hindu Law, by Jogendranath Bhattacharya, M.A., D.L. 2nd Ed. 1893, Calcutta.
- Bhattacharya's Law of Joint Family. The Law relating to the Joint Hindu Family, by Krishna Kamal Bhattacharya. 1885, Calcutta.
- B. L. R. Bengal Law Reports, 1808-1875. Calcutta.
- B. L. R. F. B. Bengal Law Reports, Full Bench Reports. Calcutta.
- Bom. Indian Law Reports, Bombay Series, 1876 to date. Bombay.
- Bom. H. C. Bombay High Court Reports, 1862-1875. Bombay.
- Bom. L. R. Bombay Law Reporter, 1899 to date. Bombay.
- Bom. P. J. Printed Judgments of Bombay High Court. Bombay.
- Borr. Borrodaile's Reports of Civil Causes adjudged by the Court of Sudar Udawlut for the Presidency of Bombay, 1800-1824. Bombay.
- Boul. Boulnois Reports. Calcutta.
- Calc. Indian Law Reports, Calcutta Series, 1876 to date. Calcutta.
- Clarke's Reports. Calcutta.
- Clarke's Rules and Orders. Rules and orders of the Supreme Court of Calcutta. Calcutta.
- C. L. R. Calcutta Law Reports, by O'Kinealy and Henderson, 1877-1884, Calcutta.
- Colebrooke's Digest. A Digest of Hindu Law, translated by H. T. Colebrooke. 1801, London.
- Colebrooke's Miscellaneous Essays. (Asiatic Researches, Vol. VII.), 1803. London. New Ed., by E. B. Cowell. 1873, London.
- Cowell's Tagore Law Lectures. 1870, Calcutta.
- Cunningham's Digest. A Digest of Hindu Law, by H. S. Cunningham, M.A. 1877, Madras.
- C. W. N. Calcutta Weekly Notes, 1896 to date. Calcutta.
- Dattaka Chandrika. A Treatise on Adoption, by Devanda Bhatta, translated by J. C. C. Sutherland. 1821, Calcutta.

- Dattaka Mimamsa.** A Treatise on Adoption, by Nanda Pandita, translated by J. C. C. Sutherland. 1821, Calcutta.
- Days-Bhaga.** A Treatise on Inheritance, by Jimuta Vahana, translated by H. T. Colebrooke. Stokes' Hindu Law Books. 1865, Madras.
- Daya-Krama Sangraha.** A Treatise on the Hindu Law of Inheritance, by Sir Krishna Tarkalankar, translated by P. M. Wynch. 1818, Calcutta.
- Daya-Tattwa.** By Raghunandana, translated by Golap Chandra Sarkar, Sastri, M.A., B.L. 1874, Calcutta.
- Daya-Vibhaga.** Law of Inheritance, translated from the Text of the Vyavahara Kanda of the Madhaviya Commentary on the Parasara Smṛti, by A. C. Burnell. 1868, Madras.
- Elberling.** A Treatise on Inheritance, Gift, Will, Sale, and Mortgage. 1844, Serampore. 1856, Madras.
- Fulton.** Fulton's Reports of the Supreme Court of Calcutta. 1845, Calcutta.
- Gantama's Institutes.** (Sacred Books of the East, vol. ii.)
- Ghose's Hindu Law.** The Principles of Hindu Law, by Jogendra Chunder Ghose, M.A., B.L. 2nd Ed. 1906, Calcutta.
- Hay.** Reports of Cases in the High Court of Bengal, 1862, 1863. Calcutta.
- Hinduism.** Introduction to the study of, by Guru Prosad Sen. 1893, Calcutta.
- Hyde.** Reports of Cases argued and determined during the years 1862-1864 in the High Court of Bengal in its Ordinary Original Civil Jurisdiction, by Edgar Hyde, M.A. 1864, 1865, Calcutta.
- I. A.** Law Reports, Indian Appeals, 1868 to date. London.
- India,** what it can teach us, by Professor Max Müller. 1883, London.
- Ind. Jur. N. S.** Indian Jurist, New Series. Reports of High Court, Calcutta, 1866, 1867. Calcutta.
- Jarman on Wills.** 4th Ed. London.
- Jolly, Die Adoption in Indien.** 1910, Wurzberg.
- Jolly's Tagore Law Lectures,** 1883. Outlines of a History of the Hindu Law of Partition, Inheritance, and Adoption, by Julius Jolly, Ph.D. 1885, Calcutta.
- Macdonell's History of Sanskrit Literature,** by Professor H. A. Macdonell. 1900, London.
- Macnaghten's Hindu Law.** Principles and Precedents of Hindu Law, by W. H. Macnaghten. 1829, Calcutta.
- Mad. Indian Law Reports,** Madras Series, 1876 to date. Madras.
- Mad. Dec.** Decisions of Madras Sudder Dewanny Adalut. Madras.
- Mad. H. C.** Madras High Court Reports, 1862-1875. Madras.
- Mad. L. J.** Madras Law Journal, 1891 to date. Madras.
- Mad. S. R.** Madras Sudder Dewanny Reports. Madras.
- Maine's Village Communities.** 1871, London.
- Max Müller's Chips from a German Workshop.** 1867, London.
- Max Müller's India,** what it can teach us. 1899, London.
- Manu.** Institutes of Manu, translated by Sir William Jones.
- Ibid.** Translated by Dr. G. Bühler. Sacred Books of the East, vol. xxv. 1886, Oxford.
- Marsh.** Marshall's Reports of Cases on Appeal to the High Court of Bengal. 1864, Calcutta.

- Mayne's Hindu Law. A Treatise on Hindu Law and Usage, by John D. Mayne. 7th Ed. 1906, Madras.
- M. L. A. Moore's Indian Appeal Cases. Reports of Decisions of the Privy Council, 1836-1872. London.
- Mitakshara. A Commentary on the Institutes of Yajñavalkya, by Vijñāneswara, translated by H. T. Colebrooke. Stokes' Hindu Law Books, 1865, Madras.
- Mitra's Law of Joint Property. The Law of Joint Property and Partition in British India, by Ram Charan Mitra. 1897, Calcutta.
- Montrou's Cases. 1846, Calcutta.
- Morley's Digest. An Analytical Digest of all the Reported Cases decided in the Supreme Courts in India, in the Courts of the Hon. East India Company, and on Appeal from India, by William H. Morley. 1860, London.
- Mulla's Civil Procedure Code. Civil Procedure Code, 1908, by D. F. Mulla. 1910, Bombay.
- Narada Smṛiti. The Institutes of Narada, translated by Dr. Julius Jolly. 1876, London.
- Ibid.* in Sacred Books of the East, vol. xxxiii.
- Norton, L. C. A Selection of Leading Cases on the Hindu Law of Inheritance, by the Hon. J. B. Norton. 1871, Madras.
- N. W. P. North-Western Provinces High Court Reports, 1869-1875. Allahabad Reprint, Rajkote.
- P. L. R. Punjab Law Reports.
- Phillips and Trevelyan. Law of Hindu Wills. 1901, London.
- Punjab Custom. Punjab Customary Law, by C. L. Tupper, C.S. 1881, Calcutta.
- Raghubandana's Smṛitis. A Commentary on the Daya-Bhaga. Udvahatattwa.
- Risley's Tribes and Castes of Bengal. 1892, Calcutta.
- Recht und Sitte, by Professor Jolly.
- Sarasvatī Vilāsa, by Prataṅga Rudra Deva, translated by Rev. Thomas Foulkes. 1881, London.
- Sarvadhikari's Law of Inheritance. The Principles of the Hindu Law of Inheritance, by Rajkumar Sarvadhikari. 1882, Calcutta.
- Sev. App. C. Sevestre's Appeal Cases. 1863, Calcutta.
- Shome's L. R. The Law Reporter, containing Judgments of the Calcutta High Court, 1878-1880. Calcutta.
- Sucar's Hindu Law. A Treatise on Hindu Law, by Golap Chandra Sarkar, Sastri, M.A., B.L. 3rd Ed. 1907, Calcutta.
- Sircar's Law of Adoption. The Hindu Law of Adoption, by Golap Chandra Saikar, Sastri, M.A., B.L. 1891, Calcutta.
- Smith's Early History of India. 1904, Oxford.
- Smṛiti Chandrika. A Treatise on the Hindu Law of Inheritance, by Devanna Bhesht, translated by T. Kristnasawmy Jyer. 1867, Madras.
- Sri Krishna's Commentary on the Daya-Bhaga.
- Steele's Law and Custom of Hindu Castes within the Dekhan Provinces. 1868, London.
- Strange's Hindu Law. Hindu Law, by Sir Thomas Strange, late Chief Justice of Madras. 1830, London.
- Strange's Manual. Manual of Hindu Law, by T. L. Strange. 2nd Ed. 1863, Madras.

LIST OF ABBREVIATIONS AND AUTHORITIES.

Strange's Notes of Cases in the Court of the Recorder and in the Supreme Court, Madras, 1798-1816. 1827, Madras.

Subedhini. A Commentary on the Mitakshara, composed in the thirteenth century, by Bisheshvar Bhatta.

Trevelyan's Law of Minors. 3rd Ed. 1906, London.

Tupper's "Punjab Customary Law." 1881, Calcutta.

Varadaraja. Varadaraja's Vyavaharamnaya, translated by A. C. Burnell, 1872, Mangalore.

Vidyasagar's "Marriage of Hindu Widows."

Viramitrodaya. A Treatise on the Law of Inheritance, by Mitra Misra, translated by Golap Chandra Sarkar, Sastri, M.A., B.L. 1879, Calcutta.

Vivada Chintamani. A Commentary on the Hindu Law prevalent in Mithila, by Vachaspati Misra, translated by Prosonno Coomar Tagore. 1863, Calcutta.

Vivada Ratnakara. Translated by Sastri G. C. Sircar and Babu Digamvar Chatterjee.

Vyavahara Mayukha. A Treatise on Hindu Law, by Nilakantha Bhutta, translated by H. Borradaile. 1827, Surat; another translated by Mr. V. N. Mandlik.

Vyavahara Nirnaya, by Vadaraja, translated by Dr. Burnell. 1872, Mangalore.

Vyavastha Chandrika. A Digest of Hindu Law as current in all the Provinces of India except Bengal Proper, by Shyama Charan Sarkar. 1878, Calcutta.

Vyavastha Darpana. A Digest of the Hindu Law as current in Bengal, by Shama Churn Sircar. 2nd Ed. 1867, Calcutta.

West and Buhler. Digest of the Hindu Law of Inheritance and Partation, by Raymond West and Johann Georg Buhler. 2nd Ed. 1878, Bombay.

Wigram's Malabar Law and Custom. A Commentary on Malabar Law and Custom, by Herbert Wigram, M.A. 1882, Madras.

Wilson's Glossary. A Glossary of Judicial and Revenue Terms and of Useful Words occurring in Official Documents relating to the Administration of the Government of British India, by H. H. Wilson, M.A., F.R.S. 1855, London.

W. R. Sutherland's Weekly Reporter. Reports of Cases by the High Court of Bengal and by the Judicial Committee, 1865-1876. Calcutta.

W. R., Act X., R. Do. Act. X., Rulings.

W. R. A. O. J. Do. Appeals from Original Jurisdiction.

W. R. C. R. Do. Civil Rulings.

W. R. F. B. Do. Full Bench Rulings.

W. R. P. C. Do. Privy Council Rulings.



HINDU LAW.

INTRODUCTION.

HINDU law, as the term is understood by British administrators of justice, consists of the rules of law which are believed to have been generally binding on Hindus in matters to which they relate, at the time of the commencement of the British dominion, with such variations as have been made by British legislation, or by the established custom of any tribe, caste, family, or locality.

Sir H. S. Maine says :¹—

“Indian² law may be in fact affirmed to consist of a very great number of local bodies of usage, and of one set of customs reduced to writing, pretending to a diviner authority than the rest,³ exercising consequently a great influence over them, and tending, if not checked, to absorb them. You must not understand that these bodies of custom are fundamentally distinct. They are all marked by the same general features; but there are considerable differences of detail.”

To use the words of a learned Brahmin judge of the High Court of Bengal,⁴ “Hindu law is a body of rules intimately mixed up with religion, and it was originally administered for the most part by private tribunals. The system was highly elastic, and had been gradually growing up by the assimilation of new usages and the modification of ancient text law under the guise of interpretation, when its spontaneous growth was suddenly arrested by the administration of the country passing into the hands of the English, and a degree of rigidity was given to it which it never before possessed.”⁵

¹ Maine's “Village Communities,” pp. 52, 53.

² I.e. Hindu.

³ This refers to the law of the Sastras, *post*, p. 8.

⁴ Banerjee's “Law of Marriage,” 2nd ed., p. 7.

⁵ Sir H. S. Maine (“Village Communities,” pp. 44, 45) says, “At the touch of the judge of the Supreme Court, who had been trained in the English school of special pleading, and had probably come to the East

in the maturity of life, the rule of native law dissolved and, with or without his intention, was to a great extent replaced by rules having their origin in English law books. Under the hand of the judges of the Sudder Courts, who had lived since their boyhood among the people of the country, the native rules hardened, and contracted a rigidity which they never had in real practice.” See article by Mr. Justice Nair of Madras in *Contemporary Review* for May,

Difference from other systems of law.

In three matters Hindu law differs from other systems of law, viz. in the family law, which arises from what is called by English lawyers the joint family system; secondly, in the law of adoption; and thirdly, in the law of succession and inheritance.

Application of Hindu law in British India.

Throughout British India, questions relating to the succession, inheritance, adoption, and marriage of Hindus, to caste, and to Hindu religious usages¹ or institutions, are decided according to Hindu law.

Although there is a variation in their language, the several enactments, which prescribe the law to be administered in the Courts established in British India, are in substantial agreement in making this provision.

The following is a list of such enactments—

High Court of Bengal.

The High Court of Bengal, in the exercise of its ordinary original civil jurisdiction.

21 Geo. III. c. 70, s. 17, read with the Letters Patent, 1862, s. 18, and the Letters Patent, 1865, s. 19.

High Court of Madras.

The High Court of Madras in the exercise of its ordinary original civil jurisdiction.

37 Geo. III. c. 142, s. 13, read with 40 Geo. III. c. 79, s. 5, and Letters Patent, 1862, s. 18.

High Court of Bombay.

The High Court of Bombay in the exercise of its ordinary original civil jurisdiction.

37 Geo. III. c. 142, s. 13, read with 4 Geo. IV. c. 71, s. 9.²

There is in the above enactments no express reference to questions of marriage, caste, or religious usages and institutions, but the Supreme Courts and High Courts have always dealt with such questions according to the personal law of the individuals concerned.³

1906. The extreme anxiety of English judges to administer to the Hindus the personal law by which they thought Hindus were bound, has induced them to accept as living law all that is to be found in the ancient law books, although much may have been abandoned in practice, and is otherwise inapplicable.

¹ I.e. any usage or institution connected with religious ceremonies; see *post*, pp. 4, 5.

² See *Mathura Naikin v. Esu Naikin* (1880), 4 Bom. 545, at p. 556.

³ See *In re Kahandas Narrandas* (1880), 5 Bom. 154, at pp. 166, 167, 170.

The Presidency Small Cause Courts have to determine all questions according to the law administered by the High Courts in the exercise of their ordinary original civil jurisdiction.¹

Bengal (outside Calcutta),
the Province of Agra and
Assam. } • Act XII. of 1887, s. 37.

Bengal, Agra
and Assam
Provincial
Courts.

The Courts of the Madras
Presidency (outside the town
of Madras), except the tracts
respectively under the juris-
diction of the agents for Ganjam
and Vizagapatam. } Act III. of 1873, s. 16.

Madras Pro-
vincial Courts.

The Bombay Presidency
(outside the island of Bom-
bay). } Bombay Regulation IV. of 1827, s. 26.

Bombay Pro-
vincial Courts.

The last-mentioned section is as follows: "The law to be observed in the trial of suits shall be Acts of Parliament, and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appear, the law of the defendant; and in the absence of specific law, and usage, justice, equity, and good conscience alone."

The Punjab. } Act IV. of 1872, s. 5, as Punjab.
amended by Act XII. of
1878.

This enactment describes the topics of Hindu law to be dealt with by the Courts as "succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship,² minority,³ bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution," but in all these cases gives preference to a valid custom, which is not contrary to equity and good conscience. Although this description is more detailed than is to be found in the other enactments, the other Courts in practice apply Hindu law to all these cases when the status, act, or right of a Hindu is in question.

Oudh.—Act XVIII. of 1876, s. 8.

Oudh.

This section contains provisions similar to those in force in the Punjab.

¹ Act XV. of 1882, s. 16.

² See Act VIII. of 1890, s. 17.

³ Except in questions of marriage,

dower, divorce, and adoption, the age of majority has been fixed by Act IX. of 1875.

Central
Provinces.

The Central Provinces.—Act XX. of 1875, s. 5.

In this enactment the topics of Hindu and Mahomedan law are described in the same way as for the Punjab, except that "divorce" is not included. In the few Hindu cases in which the question of divorce arises,¹ the question would probably be held to be included in the expression "marriage."

Burma.
British
Beluchistan.
Ajmere and
Merwara.

Burma, except the Shan States.—Act XIII. of 1898, s. 18.

British Beluchistan.—Reg. III. of 1890, s. 89.

Ajmere and Merwara.—Reg. III of 1877, s. 4.

The wording of this section corresponds with that of Act IV. of 1872, s. 5.²

Caste and re-
ligious usages.

Questions of caste and of religious usages and institutions can only be determined by the Civil Courts where their determination is necessary for the purpose of deciding a suit "of a civil nature."

A suit in which the rights to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.¹

In a Bengal case⁴ the following has been said on this subject: "It may be conceded that suits in which the principal question relates to the performance of religious rites or ceremonies are not suits of a Civil nature, and to the same category belong suits for vindication of a mere dignity attached to an office.⁵ But it is well settled that suits in which the principal question relates to the right to an office, are suits of a Civil nature, and not the less so, because the right claimed may depend upon the decision of questions as to religious rites or ceremonies or even religious tenets."⁶

¹ *Post*, p. 59.

² *Ante*, p. 3.

³ Act V. of 1908, s. 9; Act XIV. of 1882, s. 11. See the cases collected in the note to that section in O'Knealy's "Civil Procedure Code," and Mulla's "Civil Procedure Code." *Venkatachalapati v. Subbarayadu* (1890), 13 Mad. 293; *Krishnasami v. Virasami Chetti* (1886), 10 Mad. 133; *Krishnasami Ayyangar v. Samaram Singrachariar* (1906), 30 Mad. 158; *Lokenath Misra v. Dasarathi Tewari* (1905), 10 C. W. N. 505. See *Sadagopa Chariar v. Rama Rao* (1907), 34 I. A. 93; 30 Mad. 185; 11 C. W. N. 585.

⁴ *Gourmoni Debi v. Chairman of Panihati Municipality* (1910), 14

C. W. N. 1057, at pp. 1061, 1062.

⁵ See *Sunkur Bharti Swami (Sri) v. Sidha Lingayah Charanti* (1843), 3 M. I. A. 198; 6 W. R. P. C. 39; S.C. on remand (1845), 2 Bom. 473; *Sadagopa (Striman) v. Krishna Tatachariyar* (1863), 1 Mad. H. C. 301; *Narayan Vihe Parab v. Krishnaji Sadashiv* (1885), 10 Bom. 223; *Karuppa Goundan v. Kolanichayan* (1883), 7 Mad. 91; *Gadigeya v. Basaya* (1910), 34 Bom. 455; 12 Bom. L. R. 358.

⁶ *Krishnama Chariar (Tiru) v. Krishnaswami Tata Chariar* (1879), 6 I. A. 120; 2 Mad. 62; S.C. on remand *Krishnasami v. Krishnama Chariar* (1882), 5 Mad. 313.

Now suits for offices of a religious character, that is, those in which the title to the office is dependent upon the performance of religious rites and ceremonies, may be divided into two classes, namely, *first*, religious offices to which fees are appurtenant as of right, and *secondly*, religious offices to which no fees are attached, but which entitle the holder thereof to receive such gratuities as may be paid to him. In the former class of cases, that is, in respect of offices to which fees are attached, there is no doubt that a suit will lie for a declaration that the office is vested in the plaintiff.¹ As regards religious offices of the second class, there has been some divergence of judicial opinion upon the question, whether a suit will lie for an office to which no fees are attached. In "Bengal" the view has been maintained that a suit by a person claiming to be entitled to a religious office of this description against an usurper for declaration of his right to the office is a suit of a Civil nature maintainable in a Civil Court.² The contrary view has apparently been maintained in Madras.³ In Bombay, a distinction has been made between an office which is attached to a particular temple or place, and an office which is entirely personal in character. As regards the former class it has been held that the suit is maintainable.⁴ As regards the latter, the balance of authority supports the view that the suit is not maintainable,⁵ though the contrary view was maintained in *Sayad Hashim v. Husein Sha*.⁶ This distinction between local and personal offices has also been recognized in Allahabad.⁷

The Court cannot determine caste disputes, where no right of property is involved.⁸ It will not interfere when an individual has been excluded from caste, or has been excommunicated or otherwise deprived of religious rights by an authority in that behalf, unless the exclusion is contrary to natural justice, as for instance where he has not been condemned without having an opportunity of being heard.⁹ The loss of a mere social right does not justify the interference of the Court.¹⁰

In the Bombay Presidency (outside the Island of Bombay) the Courts

¹ *Muhammad v. Ahmed (Sayad)* (1861), 1 Bom. H. C. App. 18.

² *Mamat Ram v. Bapu Ram* (1887), 15 Cal. 159; *Kali v. Gouri* (1890), 17 Cal. 906; *Dinonath v. Protap Chundra* (1899), 27 Cal. 30; 4 C. W. N. 79.

³ *Tholappala v. Venkata* (1895), 19 Mad. 62; *Subbbaraya v. Vedantachariar* (1904), 28 Mad. 23.

⁴ *Limba v. Rama* (1888), 13 Bom. 548; *Gursangaya v. Tamana* (1891), 16 Bom. 281. The right of hereditary priest to a family was upheld in *Ghelabhai v. Hargovan* (1911), 36 Bom. 94; 13 Bom. L. R. 1171.

⁵ *Murari v. Suba* (1882), 6 Bom. 725; *Gadigeya v. Basaya* (1910), 34 Bom. 455; 12 Bom. L. R. 358.

⁶ (1888), 13 Bom. 429.

⁷ *Chunnu Datt Vyas y. Babu Nandan* (1910), 32 All. 527; *Bareati*

v. Chamsru (1907), 29 All. 683.

⁸ *Jethabai Narsey v. Chapsey Cooverji* (1909), 34 Bom. 467; 11 Bom. L. R. 1014.

⁹ See *Appaya v. Padappa* (1898), 23 Bom. 122; *Keshavlal v. Girja (Bai)* (1899), 24 Bom. 13; *Jagan-nath Churn v. Akali Dassia* (1893), 21 Cal. 463; *Ganapati v. Bharati Swami* (1894), 17 Mad. 222; *Vallabha v. Madusudan* (1889), 12 Mad. 495; *Krishnasami Chetti v. Virasami Chetti* (1886), 10 Mad. 133.

¹⁰ *Raghunath Damodhar v. Janardhan Gopal* (1891), 15 Bom. 599; *Mayashankar v. Harishankar* (1886), 10 Bom. 661; *Kanji Bavla v. Arjun Shamji* (1893), 18 Bom. 115; *Sudharam Patar v. Sudharam* (1899), 3 Ben. L. R. (A. C.) 91; 11 W. R. C. R. 457; *Raj Kisto Majee v. Nibae Seal* (1864), 1 W. R. C. 351.

are prohibited from deciding caste questions, except in a suit instituted for the recovery of damages on account of an alleged injury to the caste and character of the plaintiff, arising from some illegal act or unjustifiable conduct of the other party.¹ The principle is, would the taking cognizance of the matter in dispute be an interference with the autonomy of the caste.²

Contracts and
dealings.

The High Courts of Bengal, Madras, and Bombay, in the exercise of their ordinary original civil jurisdiction, are also required to administer the Hindu law in all matters of contract and dealing between Hindus, except where such matters have been the subject of legislative enactment.

So far as it goes, the Indian Contract Act³ has superseded the Hindu law of contracts;⁴ but it may sometimes be necessary to refer to Hindu law as to matters of contract or dealing. For instance, the Hindu law of gifts is to some extent still applied to gifts by Hindus⁵ and the law of *damdapat*, by which no greater amount of interest can be recovered at any one time than what will amount to the principal sum, is applied in some cases.⁶

When Hindu
law applic-
able.

In some of the enactments above referred to the Courts are required to administer the Hindu law only in cases where the defendant is a Hindu,⁷ and in some of them in cases where the parties are Hindus. In either case the question as to whether the Hindu law is to be applied depends rather upon whether

¹ Bom. Reg. II of 1827, s. 21
See *Girdhar v. Kalya* (1880), 5 Bom. 83, *Nenchand v. Savachand* (1866), 5 Bom. 84, note; *Pragya Kulan v. Govind Gopal* (1887), 11 Bom. 534

² *Murari v. Suba* (1882), 6 Bom. 725, at p. 727.

³ IX of 1872

⁴ *Madhub Chunder Porumanick v. Rajcoomar Doss* (1874), 14 B. L. R. 76; 22 W. R. C. R. 370

⁵ Post, Chap. XVIII

⁶ It applies to Calcutta and Bombay. *Nobin Chunder Banerjee v. Romesh Chunder Ghose* (1887), 14 Calc. 781; *Ramconnoy Audisarry v. Johur Lall Dutt* (1880), 5 Calc. 867; 7 C. L. R. 204; *Ganpat Pandurang v. Adary Dadabhas* (1877), 3 Bom. 312, *Nusserwanjee v. Laxman* (1906), 30 Bom. 452; 8 Bom. L. R. 82; *Jee-wandas v. Manordas Lachmondas* (1910), 35 Bom. 199; 12 Bom. L. R. 992; It applies to cases outside the island of Bombay, *Sundarabai v. Jayavanti Bhikaji Nadgouda* (1899), 24 Bom. 114; 1 Bom. L. R. 551; *Sukalai v.*

Bapu Sagarani (1899), 24 Bom. 305, 2 Bom. L. N. 18, *Dagdusa Shevakdas v. Ramchandra* (1895), 20 Bom. 611, *Ganesh Dharmadhar Maharajdev (Shri) v. Kesav Govind Kulgaokar* (1890), 15 Bom. 625, *Balkrishna Babaji v. Hari Govind* (1890), 15 Bom. 84, *Ali Sahab v. Shabji* (1895), 21 Bom. 85, *Hari Mahadaji Savarkar v. Balambhat Raghunath Khare* (1884), 9 Bom. 233, *Narayan v. Satvaji* (1872), 9 Bom. H. C. 83. It does not apply to the Bengal Presidency outside Calcutta, *Heinarian Singh v. Ram Desai Singh* (1883), 9 Calc. 871; 12 C. L. R. 590; *Surya Narain Singh v. Sirdhary Lall* (1883), 9 Calc. 825; 12 C. L. R. 400, *Pran Krishna Tewary v. Jadu Nath Trivedy* (1898), 2 C. W. N. 603. It is not in force in Madras, *Y. Annaji Rau v. Ragubai* (1871), 6 Mad. H. C. 400.

⁷ See law to be administered in High Courts in the exercise of their ordinary original civil jurisdiction, ante, p. 2.

the person whose inheritance, succession, etc., is in dispute was a Hindu, or the persons, whose dealing is in question, were Hindus, rather than upon the accident of the arrangement of the parties in the litigation.¹

As to the application of their personal law to Hindus, apart from legislative enactment, see *In re Kankandas Narrandas* (1880), 5 Bom. 154, at pp. 166, 167, 170.

SOURCES OF HINDU LAW.

In the first stage of Hindu Law, as writing was unknown, *Śruti*.
dependence had to be placed upon memory. The original *Smṛiti*.
sources were the *Śruti* (things heard) and the *Smṛiti* (things remembered). The former were said to be the actual utterings of the Creator. The latter, although of divine origin, were couched in the language of the *rishis* or sages of antiquity.

The *Śruti* were in words which would be recited and sung. They comprised the four Vedas, the six Vedāṅgas, or appendages to the Vedas, and the Upanishads. There are a few passages in the Vedas which incidentally allude to a rule of a law, or which give an instance from which a rule of law may be inferred.

The *Smṛitis* are the principal sources of lawyers' law, but they contain much which has nothing to do with law.

In the second stage of Hindu law the authorities were in writing. They consisted of *Sūtras* ² and *Sastras*, ³ which were based upon the *Śruti* and *Smṛiti*. Of these such as related to *Dharma*, or law or duty, only concern us. Even the *Dharma Sastras* contain much connected with religious rites, expiation, and so forth. *Sūtras*.
Sastras.

Although in theory Hindu law is ultimately based upon the *Vedas*, which are said to have been of Divine origin, in matters of law the *Vedas* are of no greater authority than the *Smṛitis* (things heard by the *Rishis*, or sages of antiquity), or codes of revealed law. For all practical purposes it is unnecessary to trace the law earlier than the *Dharma Sastras*.

¹ This seems to be the effect of the following cases. *Ammunissa Begum v. Dale* (1871), 6 Mad. H. C. 455, at pp. 474, 475; *Ali Sahib v. Shahji* (1895), 21 Bom. 85; *Lakshmandas Sarupchand v. Dastur* (1880), 6 Bom.

168, at pp. 183, 184; *Sarkies v. Prosonomoyee Dossee* (1881), 6 Cal. 794, at pp. 805, 806; 8 C. L. R. 78, at pp. 86, 87.

² Lat. "Strings."

³ Scriptures.

In modern practice the *Dharma Sastras* are of less authority than the Commentaries and Digests, which are based upon them, and the views expressed in the Commentaries and Digests in their place give way to the decisions of the Judicial Committee of the Privy Council and of the High Courts of British India.

Interpretation
of authorities.

With regard to the interpretation of ancient text books on Hindu law the Judicial Committee say this,¹ "They now add that the further study of the subject necessary for the decision of these appeals has still more impressed them with the necessity of great caution in interpreting books of mixed religion, morality and law, lest foreign lawyers, accustomed to treat as law what they find in authoritative books and to administer a fixed legal system, should too hastily take for strict law precepts which are meant to appeal to the moral sense, and should thus fetter individual judgments in private affairs, should introduce restrictions into Hindu Society, and impart to it an inflexible rigidity never contemplated by the original law givers."

The *Sastras*.

The principal Codes or *Sanhitas* constituting the *Dharma Sastras*² are—

1. The Code of Institutes of *Manu*.³

This is undoubtedly the most important of the *Dharma Sastras*. Its authorship is unknown, and there is great uncertainty as to its age. It was translated by Sir William Jones, who considered it was written in the thirteenth century B.C. Modern investigation has placed it much later.

Professor Macdonell⁴ considers that it 'probably assumed its present shape not much later than 200 A.D.' Dr. Buhler⁵ considers "that the work, such as we know it, existed in the second century A.D." Professor Jolly⁶ remarks that the code cannot well be placed later than the second to third century, A.D. Professor Max Muller held⁷ that it cannot be earlier than 400 A.D., but this view has been met by Dr. Buhler.⁸

2. The Code or Institutes of *Yagnavalkya*.

This code is second in importance to that of *Manu*. It was apparently written in one of the early centuries of the Christian era. The *Muktashara*⁹ is a commentary upon this code.

¹ *Gurulingaswami (Sri Balusu) v Ramalakshamma (Sri Balusu), Radhakrishnan v. Hardas Bhai* (1899), 26 L. A. 113, at p. 136; 22 Mad 398. at pp. 415, 416; 21 All. 460, at pp. 478, 479; 3 C. W. N. 427, at p. 442, 1 Bom. L. R. 228, *Balwant Singh (Bao) v. Kishori (Rani)* (1898), 25 L. A. 54; 20 All. 267; 2 C. W. N. 273.

² Works of authority. For a list of all the *Sanhitas* (collections or institutes), see Sreen's "*Vyavastha Darpana*," preface, and Bhattacharya's "*Hindu Law*," 2nd ed., p. 25.

³ For an account of *Manu's* Code see the introduction to "*Sacred Books*

of the East," vol. xxv., by Dr. G. Buhler.

⁴ "History of Sanskrit Literature," p. 428.

⁵ "Sacred Books of the East," vol. xxv. p. cxiv; "Imperial Gazetteer of India" (1908), II. 262.

⁶ "Recht und Sitte" (Encyclopedia of Indo-Aryan Research), p. 16.

⁷ "India, What can it Teach us," pp. 91, 366.

⁸ "Sacred Books of the East," vol. xxv. p. 117. In 15 C. W. N. 111 Mr. Kashin Prasad Jayaswal fixes the date at about 150 B.C.

⁹ *Post*, p. 13.

3. The Code or Institutes of *Narada*.

The translator (Dr. Jolly) of this code fixes its earliest possible date at about 400 or 500 A.D.

After the *Sastras* the next step in the development of Hindu law consisted in the composition of a number of Commentaries and Digests based upon the *Smritis* and the *Sastras*. Commentaries and Digests.

The authority of the several commentators necessarily varied in different districts, and thus arose the schools of law, which are operative in different parts of India.¹

The differences between these schools are said to have arisen in the main from the different views expressed by the commentators who were of authority in the districts which were governed by the schools respectively. Difference of the custom of districts may also have helped to differentiate the schools both directly and indirectly by influencing the opinions of the commentators.

The two principal schools² of Hindu law are—

1. The Mitakshara³ school, which prevails throughout India, except where the Bengal school prevails. Principal schools of Hindu law.

This is the older and more orthodox system of Hindu law. It is a relic of the patriarchal system.

2. The Bengal or Daya-bhaga⁴ school, which prevails where the Bengal language is spoken by the inhabitants of the country.⁵

This school was founded by Jamutavahana⁶ and Raghunandana⁷ in

¹ See *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A., 397, at p. 435, 1 B. L. R. P. C. I., at p. 11, 10 W. R. P. C. 17, at p. 21; G. D. Banerjee's "Law of Marriage," 2nd ed., p. 5. Dr. Jogendranath Bhattacharya ("Hindu Law," 2nd ed., pp. 28, 29) considers that the Commentaries and Digests were the outcome of a desire to reconcile the *Smritis* at the time when Brahminism had regained its ascendancy. See also S. C. Mitra in "Law Quarterly Review," vol. xxi. p. 380, xxii. p. 50.

² This expression has been objected to, but it was defended by Colebrooke (Strange's "Hindu Law," vol. i. p. 319) who originated it. See G. D.

Banerjee's "Law of Marriage," 2nd ed., pp. 6, 7, Rajkumar Sarvadhakari's "Law of Inheritance," pp. 343-346.

³ So named after the treatise by Vijnaneshvara (*post*, p. 13), which is of authority throughout India, except where superseded by other works in Bengal and Western India.

⁴ Sometimes called the *Gauriya* school.

⁵ That is, the Revenue divisions of the Presidency of Bengal, Rajshaye, Dacca, Burdwan, and Chittagong, Manbhoom, the Assam Valley districts, Sylhet and Cachar.

⁶ *Post*, p. 12.

⁷ *Post*, p. 12.

the fifteenth century. It has been considered by some writers to owe its origin to Brahminical authority,¹ but Mr. S. C. Mitra attributes the peculiarities of this school to the commercial activity of the Bengalees, and to their antagonism to Brahmanism.² The former view is supported by the religious character of the system of inheritance (*post*, chap. xii). The latter view is supported by the freedom of alienation allowed by the Bengal school.

Subdivision of
Mitakshara
school.

The Mitakshara school is subdivided into four minor schools, viz.—

1. The Benares school.

This school prevails in Behar, in the district of Benares, and in Central and North-western India, and in the whole of Northern India,³ except that in the Punjab it is considerably modified by customary law.

2. The Dravida or Dravida school.

This school prevails in the Madras Presidency, *i.e.* in the southern portion of the peninsula. It was founded in the thirteenth century by Devananda Bhatta.⁴

Subdivision of
Dravida
school.

Mr. Morley⁵ says that the Dravida school "may be subdivided into three districts, in each of which some particular law treatises have more

¹ See Mayne's "Hindu Law," 7th ed., p. 328.

² "Law Quarterly Review," vol. xxi p 380, vol. xxii p 50

³ Orissa is said, in Morley's "Digest" (Introduction, p. cxc.), to be governed by this school. In a note to *Bishen-purea Munee v. Soogunda (Ranee)* (1801), 1 Ben. Sel. R. 37, at p. 39, note (2nd ed., 49, at p. 51, note), Mr. Macnaghten states that "the authorities followed in Orissa are the same with those of Bengal"; but the opinions of the pundits in this case⁶ were not founded on Bengal authorities, and as Mr. Mayne points out (7th ed., p. 11, note), in another Orissa case mentioned in Macnaghten's "Hindu Law," n. 306, the opinion of the pundits was founded on the Mitakshara. In *Raghunadha (Sri) v. Brozo Kishoro (Sri)* (1876), 3 I. A. 154; 1 Mad. 69; 25 W. R. C. R. 291, which was a case from Ganjam, which was included in the ancient Hindu kingdom of Orissa, the law of the Dravida school was applied apparently without question. Mr. Mayne

("Hindu Law," 7th ed., p. 11) suggests that the Court applied the system of law with which it was most familiar. In *Raghunand Doss v. Sadhu Churn Doss* (1878), 4 Calc. 425; 3 C. L. R. 534, the Mitakshara law was applied to a case from Orissa. See also *Kalee Pudo Banerjee v. Chotun Pandah* (1874), 22 W. R. C. R. 214; *Jogendra Bhupati Hurri Chundun Mahapatra (Raja) v. Nityanund Mansingh* (1890), 17 I. A. 128; 18 Calc. 151. In *Parbati Kumari Devi (Srimati Ran) v. Jagadis Chunder Dhabal* (1902), 29 I. A. 82; 29 Calc. 432; 6 C. W. N. 490; 4 Bom. L. R. 365, the decision of the Court in India showed that Orissa was governed by the Mitakshara, but the question was not decided by the Judicial Committee.

⁴ *Post*, p. 14. See *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. L. A. 397, at p. 433, 1 B. L. R. P. C. 1, at p. 10; 10 W. R. P. C. 17, at p. 20.

⁵ Morley's "Digest," Introduction, p. cxc.

weight than others; these districts are: Dravida, properly so called,¹ Karnátaka,² and Andhra."³

3. The Maharashtra school.

This school prevails where the Maratha language is spoken as a vernacular and in Guzerat and Kanara.

4. The Mithila school.

This school prevails in what was in ancient times the Province of Mithila, or Tirhoot,⁴ and in the adjoining districts. It was founded by Chandeshwar, 1314 A.D., and Vachaspati Misra, who flourished in the fifteenth century.⁵

Sastri Golap Chunder Sircar⁶ adds to this enumeration a school which Punjab school. he calls the Punjab School. This school is not recognized by other text writers, and is not referred to in the authorities by that name. There may be many differences between the Hindu law as administered in the Punjab and that which is administered in the other provinces, but such differences arise from the existence of local customs, upon which the law is there based,⁷ and do not, as in the case of the other schools,⁸ arise from differences of opinion as to the true construction of texts.

The geographical limits of these schools cannot be accurately defined.⁹ Where there is a dispute as to which school prevails in a particular locality the question must be determined upon evidence.

The redistribution of districts or other arbitrary divisions of land by the Government does not render the inhabitants of the locality dealt with liable to be subject to a different school of law.¹⁰

¹ Where the Tamil language is spoken.

² Where the Kanarese language is spoken.

³ Where the Telugu language is spoken. See *Narasammal v. Bakramachari* (1863), 1 M. H. C. 420, at p. 425.

⁴ "The district of Tirhoot, which is a corruption of the Sanskrit name *Tirabhukti*, is, as the name implies, bounded on three sides by three rivers, namely, by the Gandak on the west, the Kosi on the east, and the Ganges on the south." G. C. Sircar's "Law of Adoption," p. 446. See map of ancient Mithila annexed to P. C. Tagore's translation of the *Vivada Chintamani*.

⁵ Bhattacharya's "Hindu Law," 2nd ed., p. 49.

⁶ "Hindu Law," 1st ed., p. 24. "Law of Adoption," pp. 226, 254.

⁷ See Tupper's "Punjab Customary Law," vol. II. pp. 82-86.

⁸ *Ante*, p. 9.

⁹ See Morley's "Digest," Introduction, pp. cxxxix-cxlii.

¹⁰ *Prithi Singh v. Court of Wards* (1875), 23 W. R. C. R. 272. This decision was after remand by the Judicial Committee in *Sheo Soondoree (Musamut) v. Prithi Singh* (1872), 21 W. R. C. R. 89. The judgment of the Judicial Committee seems to show that the burden was upon the person asserting the retention of the law originally applicable to the district, but this view of the judgment was not suggested in the judgment of the High Court on remand, nor was it referred to when the case came again before the Judicial Committee (*Sheo Soondoree v. Prithi Singh* (1877), 4 L. A. 147).

Paramount
works of
authority,
Bengal school.

The following are the principal works of authority in the Bengal School : ¹—

1. *Daya-bhaga*,² by Jimutavahana.

Nothing is known of the author. He probably lived in Bengal in the fifteenth century.³ The work was translated by Mr. H. T. Colebrooke. It is the highest authority in Bengal.⁴

2. *Smriti* of Raghunandana.

This author is said to be of the highest authority in Bengal except in matters of inheritance.⁵ The portion of the work relating to inheritance (*Dayatattwa*) in general strictly follows the *Daya-bhaga*. Raghunandana seems to have flourished in the latter half of the fifteenth century or beginning of the sixteenth century.⁶

3. *Daya-krama Sangraha*, by Sree Krishna Tarkalankar.

This is a treatise on the law of inheritance, following the *Daya-bhaga*, and apparently written early in the eighteenth century. It was translated by Mr. P. M. Wynch in 1818.

4. *Srikrishna's Commentary*. A commentary on the *Daya-bhaga*, by the last-named writer.

5. *Dattaka Chandrika*. A treatise on the law of adoption.

The translator (Mr. Sutherland) ascribed the authorship of this work to Devananda Bhatta, the author of the "*Smriti Chandrika*,"⁷ but it is now taken to be the work of a Bengal Pundit.⁸ It has been suggested that this work was forged for the purpose of a particular suit,⁹ but the Judicial Committee has treated the "*Dattaka Chandrika*" as of great authority in questions of adoption in Bengal.¹⁰

¹ See Mitra's "Law of Joint Property," p. 13; Bhattacharya's "Hindu Law," 2nd ed., p. 49.

² Lit. : Partition of Inheritance.

³ See Bhattacharya's "Hindu Law," 2nd ed., pp. 33-35, and preface to Colebrooke's translation of "*Daya-bhaga*."

⁴ Bhattacharya's "Hindu Law," 2nd ed., p. 37.

⁵ Bhattacharya's "Hindu Law," 2nd ed., p. 36. The portion of his work dealing with inheritance (*Dayatattwa*) has been translated by G. C. Siroar.

⁶ See Sircar's "Vyavastha Darpana," 2nd ed. xvi. note.

⁷ *Post*, p. 14.

⁸ Mayne's "Hindu Law," 7th ed.,

pp. 31, 32; V. N. Mandlik, *Introd.*, 73; Bhattacharya's "Hindu Law," 2nd ed., p. 32; Jolly's "Lectures," pp. 22, 23; *Ganga Sahai v. Lekhraj Singh* (1886), 9 All. 253, at pp. 323, 324.

⁹ Sircar's "Law of Adoption," pp. 124-126. This view is also taken by Dr. Jolly in "Die Adoption in Indien," Würzburg, 1910.

¹⁰ *Rungama v. Atchama* (1847), 4 M. I. A. 1, at p. 57; 7 W. R. P. C. 57, at p. 59; *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 437; 1 B. L. R. P. C. 1, at p. 13; 10 W. R. P. C. 17, at p. 22; *Gurulingaswami (Sri Balusu) v. Ramalakshamma (Sri Balusu)*, *Radhamohun v. Hardai Bibi*

The *Mitakshara* is also of high authority in Bengal in matters where it does not conflict with the above-named works.¹

In the *Mitakshara* school the guiding authority² is the work from which the name of the school has been taken, viz. the *Mitakshara*, which is a commentary on *Yajñavalkya*,³ by Vijñaneshwara Jogi. Mitakshara school.

The author is said to have lived at the end of the eleventh century. "Vijñaneshwara's views and opinions are eminently practical. The high authority which his work enjoys almost throughout India is due partly to that reason and partly also to the fact that he was the councillor of the most powerful Hindu king of his time."⁴ He lived at Kalyana (probably the modern Kalyāni in the Nizam's dominions), which was the capital of Vikramāditya VI., or Vikramanka, king of the Chalukya kingdom of the Deccan from 1076 for about half a century.⁵

The schools, which are subdivisions of the *Mitakshara* school, give preference to certain treatises and commentaries which control and explain passages of the *Mitakshara*. Thus arise the differences between those subdivisions.⁶

Where there is no consensus of opinion among the commentators or established usage, the doctrines of the *Mitakshara* prevail.⁷

The following are the principal works of authority in those schools :⁸—

(1899), 26 I. A. 113, at pp. 131, 132 ; 22 Mad. 398, at pp. 411 ; 21 All. 460, at pp. 465, 466 ; 3 C. W. N. 427, at p. 439 ; 1 Bom. L. R. 226 ; *Bhagwan Singh v. Bhagwan Singh* (1898), 26 I. A. 153, at p. 161 ; 21 All. 412, at p. 419 ; 3 C. W. N. 454, at p. 457 ; 1 Bom. L. R. 311, S.C. in Court below (1895), 17 All. 294.

¹ Bhattacharya's "Hindu Law," 2nd ed., p. 34. *Bhugwandeem Doobey v. Myna Bae* (1867), 11 M. I. A. 487, at p. 507 ; 9 W. R. P. C. 23, at p. 29 ; *Akshay Chandra Bhattacharya v. Hari Das Gosswami* (1908), 35 Calo. 721, at p. 727 ; 12 C. W. N. 511, at p. 515.

² *Jagannath Prasad Gupta v. Runjit Singh* (1897), 25 Calo. 354, at p. 368.

Collector of Madura v. Mootoo Ramalinga Sathupathy (1868), 12 M. I. A. 397, at p. 435 ; 1 B. L. R. P. C. 1, at p. 11 ; 10 W. R. P. C. 17, at p. 21. *Krishnaji Vyanktesh v. Pandurang* (1875), 12 Bom. H. C. 65.

³ *Ante*, p. 8.

⁴ Bhattacharya's "Hindu Law," 2nd ed., p. 31.

⁵ V. A. Smith's "Early History of India," p. 329.

⁶ *Bhugwandeem Doobey v. Myna Bae* (1867), 11 M. I. A. 487, at pp. 507, 508 ; 9 W. R. P. C. 23, at p. 29.

⁷ See *Raju Gramany v. Ammani Amma!* (1906), 29 Mad. 358.

⁸ Sircar's "Hindu Law," 1st ed., p. 13. Mitra's "Law of Joint Property," p. 1.

Benares
school.

In the Benares school.

1. *Vira Mitrodaya*.¹

This work was written by Mitra Misra, who probably lived in the sixteenth century, for the purpose of refuting the arguments of Jimuta Vahana² and the other writers of the Bengal school.

The *Vira Mitrodaya* is of very high authority in the Benares school,³ but cannot be followed where it conflicts with a clear statement in the *Mitakshara*.⁵

2. *Nirnaya Sindhu*.

This work was written by Kamalakara, and was completed in 1612 A.D.

3. *Dattaka Mimansa*.

This is a treatise on adoption by Nanda Pandita, who lived at Benares in the seventeenth century. It has been translated by Mr. Sutherland. The authority of this work has been emphasized by the Judicial Committee on more than one occasion.⁶

Dravida
school.

In the Dravida school.⁷

1. *Smriti Chandrika*, by Devananda Bhatta.

The author lived in Southern India about the thirteenth century.⁸ The authority of this work is said by some to be second only to that of the *Mitakshara*,⁹ but the question as to the comparative authority of this work, and of the *Parasara Madhavya*, has not been judicially determined.¹⁰ It has been translated by T. Kristnasawmy Iyer.

2. *Parasara Madhavya*.

This is a commentary on the *Parasara Smriti* by Madhava, who was Prime Minister of Bukka, the third King of Vijayanagara, whose reign

¹ See Introduction to G. C. Sircar's translation, pp. xiii., xiv. Bhattacharya's "Hindu Law," 2nd ed., p. 36.

² *Ante*, p. 12.

³ S. C. Sircar's "Vyavastha Chandrika," vol. i., Introduction, p. 17, and note.

⁴ *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 438; 1 B. L. R. P. C. 1, at p. 14; 10 W. R. P. C. 17, at p. 22; *Gridhari Lall Ray v. The Bengal Government* (1868), 12 M. I. A. 448, at p. 466; 1 B. L. R. P. C. 44, at p. 52; 10 W. R. P. C. 32, at p. 34; *Tulshi Ram v. Behari Lal* (1889), 12 All. 328, at pp. 340-342; *Suba Singh v. Sarafraz Kunwar* (1896), 19 All. 215, at p. 231.

⁵ *Jagannath Prasad Gupta v. Runjit Singh* (1897), 25 Calc. 354, at pp. 367, 368.

⁶ Cases, *ante*, p. 12, note 10. See *Tulshi Ram v. Behari Lal* (1889), 12 All. 328, at pp. 341, 342; *Ganga Sahai v. Lekhraj Singh* (1886), 9 All. 253, at pp. 322, 323.

⁷ See *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397 at p. 437; 1 B. L. R. P. C. 1, at p. 13; 10 W. R. P. C. 17, at p. 22.

⁸ Jolly's "Lectures," 20, 21.

⁹ Strange's "Manual," 2nd ed., pp. 3, 4. Bhattacharya's "Hindu Law," 2nd ed., p. 32.

¹⁰ Banerjee's "Law of Marriage," 2nd ed., p. 381.

commenced about 1361. It is said to be "in high esteem in Benares and in the Southern and Western schools."¹

3. *Sarasvati Vilasa*.²

This work was written by Pratapa Rudra Deva, a King of Orissa, early in the sixteenth century. It has been translated by Mr. Foulkes.

4. *Vyavahara Nirnaya*.

This was written by Varadaraja about the end of the sixteenth century. It has been translated by Dr. Burnell.

5. *Dattaka Chandrika*.³

The application of this work to Southern India is said to have been due to a mistake made by the translator in attributing the authorship to the author of the *Smriti Chandrika*; ⁴ but as it has been treated by the Judicial Committee as an authority in Southern India,⁵ the effect of this mistake, if it be one, cannot be altered.

The Judicial Committee has also affirmed the *Vira Mitrodaya* ⁶ to be a work of authority in Southern India,⁷ but it is submitted that that work is only of secondary authority elsewhere than in Benares.⁸

In the Maharashtra school

Maharashtra school.

1. *Vyavahara Mayukha*.

This was composed by Nilkantha Bhatta about the beginning of the seventeenth century. It is of paramount authority in Gujarat,⁹ in the Northern Konkan,¹⁰ and in the island of Bombay.¹¹ In the Mahratta

¹ Bhattacharya's "Hindu Law," p. 31. The portion relating to inheritance (*Daya-vibhaga*) has been translated by Dr. Burnell.

² Lit.: the recreations of *Sarasvati*, the goddess of learning. As to the authority of this work, see "Nelson's View of Hindu Law," pp. 112, 113.

³ *Ante*, p. 12.

⁴ See Jolly's "Lectures," p. 23.

⁵ See cases *ante*, p. 12, note 10.

⁶ *Ante*, p. 14.

⁷ *Moniram Kolita v. Kerry Kolutany* (1880), 7 I. A. 115, at p. 153; 5 Calc. 776, at pp. 788, 789; 6 C. L. R. 322, at p. 332, referring to *Gridhari Lal Roy v. The Bengal Government*, 12 M. I. A. 448, at p. 466; 1 B. L. R. P. C. 44, at p. 52; 10 W. R. P. C. 32, at p. 34, which merely states that

the work in question is of high authority in Benares.

⁸ See *post*, p. 16.

⁹ See West and Bühler's "Hindu Law," 2nd ed., p. 3. This applies to the Kamathias, settled in Bombay; *Jagannath Raghunath v. Narayan* (1910), 34 Bom. 553; 12 Bom. L. R. 545.

¹⁰ *Sakharam Sadashiv Adhikari v. Sitabai* (1879), 3 Bom. 353, at pp. 365 *et seq.*

¹¹ *Vandrayan Jekisan (Patel) v. Manilal Chhunikal (Patel)* (1890), 15 Bom. 535, at p. 574; *Lallubhai Bapubhai v. Mankuwarbai* (1876), 2 Bom. 388, at p. 418; *Krishnaji Vyanktesh v. Pandurang* (1875), 12 Bom. H. C. 65. See *Vijayarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244. This

country, and in the Southern Konkan and Northern Canara, its authority is inferior only to that of the *Mitakshara*.¹ Throughout Western India it is of high authority,² and its aid will be invoked where the *Mitakshara* is silent or obscure.³ It has been translated by Mr. Borradaile, and again by Mr. V. N. Mandlik.

"Questions on the Hindu law of inheritance to property in the island of Bombay are to be determined in accordance with the *Mitakshara*, subject to the doctrine to be found in the *Mayukha*, where the latter differs from it. But as laid down by Telang, J., in *Gojabai v. Shrimant Shahajirao Maloji Raje Bhosle*;⁴ 'Our general principle should be to construe the *Mitakshara* and the *Mayukha* so as to harmonize with one another wherever and so far as that is reasonably possible' "⁵

2. *Nirnaya Sindhu*.⁶

3. *Dattaka Mimansa*.⁷

4. *Samskara Kaustaba*.⁸

This work is by Anantadeva. It is said to belong to the same period as the *Nirnaya Sindhu*.

In the introduction to West and Bühler's "Hindu Law" it is stated that the *Viramirodaya*¹⁰ and the *Dattaka Chandrika*¹¹ are also authorities in Western India. The latter is an authority in Western India on the subject of adoption,¹² but the former is, it is submitted, rather a Benares than a Bombay authority.¹³

applies to Kamathis settled in Bombay, *Jagannath Raghunath v. Narayan* (1910), 34 Bom. 553; 12 Bom. L. R. 545.

¹ *Balkrishna Bapuji Apte v. Lakshman Dinkar* (1890), 14 Bom. 605. *Jankibai v. Sundra* (1890), 14 Bom. 612; *Krishnaji Vyanktesh v. Pandurang* (1875), 12 Bom. H. C. 65.

² *Vandrayan Jekisan (Patel) v. Manilal Chunilal (Patel)* (1890), 15 Bom. 565, at p. 574.

³ *Bhagwan Vithoba v. Warubai* (1908), 32 Bom. 300, at p. 312; 10 Bom. L. R. 389.

⁴ (1892), 17 Bom. 114, at p. 118.

⁵ *Kesserbai (Bai) v. Hunsraj Morarji* (1906), 33 I. A. 176, at p. 187; 30 Bom. 431, at p. 442; 10 C. W. N. 802, at p. 807; *Bhagwan Vithoba v. Warubai* (1908), 32 Bom. 300, at p. 312; 10 Bom. L. R. 389.

⁶ *Ante*, p. 14.

⁷ *Ante*, p. 14. See *Waman Raghupati Bova v. Krishnaji Kashirav Bova* (1889), 14 Bom. 249, at p. 259; *Narayan Babaji v. Nana Manohar* (1870), 7 Bom. H. C. A. C. 153, at

p. 166; *Bayabai v. Bala* (1866), 7 Bom. H. C. App., i., at pp. x., xii., *Pranjeerandas Toolseydas v. Dewcooverbae* (1859), 1 Bom. H. C. 130, at p. 131.

⁸ *Collector of Madura v. Moottoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 438; 1 B. L. R. P. C. 1, at p. 14; 10 W. R. P. C. 17, at p. 22.

⁹ 2nd ed., p. 1.

¹⁰ *Ante*, p. 14.

¹¹ *Ante*, p. 12.

¹² *Waman Raghupati Bova v. Krishnaji Kashirav Bova* (1889), 14 Bom. 249, at p. 259.

¹³ *Dhondu Gurav v. Gangabai* (1879), 3 Bom. 369; *Collector of Madura v. Moottoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 438; 1 B. L. R. P. C. 1, at p. 14; 10 W. R. P. C. 17, at p. 22; *Gridhari Lall Roy v. The Bengal Government* (1868), 12 M. I. A. 448, at p. 466; 1 B. L. R. P. C. 44, at p. 52; 10 W. R. P. C. 32, at p. 34; K. K. Bhattacharya's "Law of the Joint Family," p. 199; see *ante*, p. 14.

In the Mithila school.

Mithila
school.

1. *Vivada Chintamani*.

This work was written by Vacaspati Misra, who flourished in Tirhoot in the beginning of the fifteenth century. It is the work of highest authority in this school. It has been translated by Prosono Coomar Tagore.

The *Vyavahara Chintamani* and the *Dwaita Nirnaya*, both by the author of the *Vivada Chintamani* are also authorities in the Mithila country.

2. *Vivada Ratnakara*.

This is an older compilation, but of less authority than the *Vivada Chintamani*. The writer was Chandesvara Thakkura, Prime Minister of Hara Sinha Deva, King of Mithila. He flourished at the end of the thirteenth or beginning of the fourteenth century. This work has recently been translated by G. C. Sircar and Digamvar Chatterjee.

3. *Dattaka Mimamsa*.¹

Sudhiviveka, by Rudradhara, *Dwaita Parishista*, by Keshav Misra,² and *Vivada Chandra*, by Lachmadevi,³ are also authorities in this school.

The Bengal and the Mitakshara systems differ in two main particulars,⁴ viz.—

Differences
between the
schools.

1. As to the persons who are coparceners, and their rights, as such, in property held in coparcenary, i.e. as a joint Hindu family.

Under the Mitakshara system rights in family property are acquired by birth and lapse by death.⁵ Individual rights are not generally recognized. The family is the unit and females have generally no right of succession, the male members having rights of survivorship. In Bengal, rights in joint property are acquired by inheritance or will. In consequence of this difference, the law as to the power to alienate an undivided share differs under the two systems.

2. As to inheritance.

The Mitakshara system prefers agnates to cognates generally. The Bengal school founds rights of inheritance upon the principle of the amount of religious efficacy which the person claiming can give by an

¹ *Ante*, p. 14. *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 437; 1 B. L. R. P. C. 1, at p. 13; 10 W. R. P. C. 17, at p. 22.

² Bhattacharya's "Hindu Law," 2nd ed., p. 49.

³ Colebrooke's "Digest," Introduction, p. xix.; see *Rutheputty Dutt Jha v. Rajunder Narain Raee* (1839), 2 M. I. A. 133, at p. 147.

⁴ See Mayne's "Hindu Law," 7th ed., p. 40.

⁵ *Post*, pp. 219, 228, 229.

offering to the *manes* of the person, whose property is in dispute, or of his ancestor.

The subdivisions of the Mitakshara school differ between themselves, and from the Bengal school, as to the right of a widow to adopt a son to her deceased husband,¹ and in certain other matters connected with adoption. They also differ in some questions of inheritance.

The Maharashtra school differs from all other schools in conferring rights of inheritance upon certain female relations, and in giving greater powers to female owners.

Decisions of
Courts of Law.

The decisions of English Courts of law have played a considerable part in ascertaining, developing, and sometimes in crystallizing Hindu law. The Courts in India necessarily follow without question the decisions of the Judicial Committee of the Privy Council, and of the High Courts, if any, to which they are subordinate. Now that the volume of reported decisions upon questions of Hindu law has become so large, judicial decisions, in most cases, provide an answer to the questions which arise.

Legislative
enactments.

By the following enactments the Legislature has made some alterations in those portions of the Hindu law which the Courts are required to administer :—

1. Act XXI. of 1850 (Freedom of Religion).
2. Act XV. of 1856 (Hindu widows remarriage).
3. Act XXI. of 1866 (Native converts Marriage Dissolution).
4. Act VII. (Bom. C.) of 1866 (Hindu's liability for ancestor's debts).
5. Act XXI. of 1870 (Hindu wills).
6. Act IX. of 1872 (Contracts).²
7. Act IX. of 1875 (Majority).
8. Act IV. of 1882 (Transfer of Property).
9. Act III. (B. C.) of 1904 (Settled Estates Act).
10. Act II. (U. P. C.) of 1900 (Oudh Settled Estates Act).

TO WHOM HINDU LAW IS APPLICABLE.

To what
persons Hindu
law is ap-
plicable.

The expression "Hindus," in the enactments above referred to, includes not only persons who profess what is called the

¹ *Post*, pp. 113-121.

² See *ante*, p. 6.

Hindu religion,¹ but also such of their descendants as have not openly abjured that religion.²

"In doubtful cases conformity to the manners and observances of the Hindus is a safe guide for concluding that a particular family is to be governed by the Hindu law."³

Hindus are divided into the following four main divisions, Castes. or, as they are usually called, "castes".⁴ :—

1. The *Brahmins*, or priestly caste.
2. The *Kshatriyas*, or warrior caste.⁵
3. The *Vaisyas*, or agricultural caste.
4. The *Sudras*.

When caste first originated in the Epic Age, the pure Hindus were members of the first three of these divisions, and the members of those divisions are now styled regenerate, or twice-born, having regard to the ceremonies of initiation which are peculiar to them. Each of these castes is now divided into a number of sub-castes. In the case of the Sudras nearly every occupation has its caste.

In the absence of a special custom, Hindu law is applied to Jains,⁶ to Sikhs,⁷ and to Nambudri Brahmins.⁸

Jains and
Sikhs.

Degradation from caste,⁹ or a departure from orthodoxy in the matter of diet or ceremonial observance,¹⁰ does not prevent the application of Hindu law.

Loss of caste.

¹ See *Dagree v. Pacotti San Jao* (1895), 19 Bom. 783, at p. 788.

² Banerjee's "Law of Marriage," 2nd ed., p. 16.

³ Bhattacharya's "Law of the Joint Family," p. 50.

⁴ This word is derived from the Portuguese "casta," race, species.

⁵ See *Run Murdun Syn (Chuo-torya) v. Sahub Purhulad Syn* (1857), 7 M. I. A. 18, at p. 46; 4 W. R. P. C. 132, at pp. 135, 136. As to the almost complete disappearance of Kshatriyas and Vaisyas, see Sircar's "Hindu Law," 3rd ed., p. 39.

⁶ *Sheo Singh Rai v. Dakho (Mussamut)* (1878), 5 I. A. 87; 1 All. 688; S. C. in court below (1874), 6 N. W. P. 382; *Chotay Lall v. Chunno Lall* (1878), 6 I. A. 15; 4 Calc. 744; 3 C. L. R. 465; *Ambabai v. Govind* (1898), 23 Bom. 257; *Amava v. Mahadgauda* (1896), 22 Bom. 416, at p. 418; *Rukhab v. Chunnilal Ambushet* (1891), 16 Bom. 347; *Mohabeer Pershad (Lalla) v. Kundun Koovar*

(*Mussamut*) (1867), 8 W. R. C. R. 116; *Bhagvandas Tejmal v. Rajmal* (1875), 10 Bom. H. C. 241, at p. 258; *Bachebi v. Makkhan Lal* (1880), 3 All. 55.

⁷ *Bhagwan Koor (Rani) v. Jogendra Chandra Bose* (1903), 30 I. A. 249, at p. 254; 31 Calc. 11, at pp. 30, 31; 7 C. W. N. 895, at p. 901; 5 Bom. L. R. 845; *Kissen Chunder Shaw (Doe dem) v. Baidam Beebee* (1815), 2 Morley's "Digest," 220. See 1 Morley's "Digest," p. clxxvii.; *Juggo Mohun Mullick (Doe dem) v. Saumcoomar Bebee* (1815), 2 Morley's "Digest," 43; Sir Edward Hyde East's evidence before a committee of the House of Lords, referred to in *Lopes v. Lopes* (1868), 5 Bom. H. C. O. C. 172, at p. 185.

⁸ *Vishnu Nambudri v. Akkamna* (1910), 34 Mad. 496.

⁹ Act XXI. of 1850.

¹⁰ *Bhagwan Kuar (Rani) v. Jogendra Chandra Bose* (1903), 30 I. A. 249, at p. 257; 31 Calc. 11, at p. 33;

Change of
religion.

Except so far as the Hindu law may be inconsistent with the new religion (if any) adopted by persons who have renounced the Hindu religion,¹ such law continues generally applicable to such persons and to their descendants, if they do not elect to abandon their subjection to Hindu law.²

As to the effect of the conversion of a coparcener, see *post*, p. 335.

Conversion to
Mahomedan
religion.

But except on proof of a well-established custom,³ and then only with regard to succession and inheritance,⁴ converts to the Mahomedan religion, which in itself regulates the devolution of property, are bound by the Mahomedan law.⁵

Such custom has been fully established in the case of the Khoja Mahomedans⁶ the Cutchi Memons,⁷ the Suni Borah Mahomedan

7 C. W. N. 895, at p. 903; 5 Bom. L. R. 845.

¹ As, for instance, persons converted to Christianity cannot retain the practice of polygamy, *post*, p. 32. *In re Millard* (1887), 10 Mad. 218; *Lopez v. Lopez* (1885), 12 Calc. 706, at p. 722; *Emperor v. Lazar* (1907), 30 Mad. 550.

² *Abraham v. Abraham* (1863), 9 M. I. A. 199, at pp. 240-242; 1 W. R. P. C. 1, at pp. 5, 6 (a case of conversion to Christianity); *Ponnusami Nadan v. Dorasami Ayyan* (1880), 2 Mad. 209 (ditto); *Bhagwan Koer (Rani) v. Jogendra Chandra Bose* (1903), 30 I. A. 249, at pp. 256, 257; 31 Calc. 11 at p. 33; 7 C. W. N. 895, at p. 903; 5 Bom. L. R. 854 (a case of an alleged Brahmo); *Kusum Kumari Roy v. Satyaranjan Das* (1903), 30 Calc. 999; 7 C. W. N. 784 (a case of a Brahmo). In *Francis Ghosal v. Gabri Ghosal* (1906), 31 Bom. 25, differing from *Tellis v. Saldanha* (1886), 10 Mad. 69, it was held that coparcenership can be a part of the law governing the rights of a Christian family, converted from Hinduism. In *Raj Bahadur v. Bishen Dayal* (1882), 4 All. 343, at p. 347, it is said, "A Hindu or Mohammedan who becomes a convert to some other faith, is not deprived *ipso facto* of his rights to property by inheritance or otherwise. *Prima facie* he loses the benefits of the law of the religion he has aban-

doned, and acquires a new legal status according to the creed he has embraced, if such creed involves with it legal responsibilities and obligations."

³ *Post*, pp. 23-28.

⁴ *Khoja and Memon's case* (1847), Perry's O. C. 111.

⁵ *Abraham v. Abraham* (1863), 9 M. I. A. 199, at p. 242; 1 W. R. P. C. 1, at p. 5; *Mahomed Sidick v. Haji Ahmed* (1885), 10 Bom. 1, at pp. 9, 10; *Raj Bahadur v. Bishen Dayal* (1882), 4 All. 343, at p. 347; *Sajan (Musqt) v. Roop Ram* (1867), 2 Agra, 61; *Surnust Khan v. Kadir Dad Khan* (1865), Agra, F. B. 39 (edition 1874, p. 29); *Machhbai (Bai) v. Hirbai (Bai)* (1911), 35 Bom. 564. See *Jowala Buksh v. Dharum Singh* (1866), 10 M. I. A. 511, at pp. 537, 538; *Hakim Khan v. Gool Khan* (1882), 8 Calc. 826; 10 C. L. R. 603, doubting *Rup Chand Chowdhry v. Latu Chowdhry* (1878), 3 C. L. R. 97. As to caste customs, see *Jina (Bai) v. Kharwar Jina* (1907), 31 Bom. 366. When the Hindu law of inheritance applies, converts to Islam take with all the liabilities annexed to the estate, such as the payment of maintenance and debts; *Rashid Karmali v. Sherbanoo* (1904), 29 Bom. 85.

⁶ See *Ahmedbhoy Hubibbhoy v. Casumbhoy Ahmedbhoy* (1889), 13 Bom. 534, and cases there cited.

⁷ *Mahomed Sidick v. Haji Ahmed*

community of the Dhandhuka Taluka in Gujerat,¹ and the Molesalem Girasias.²

The Indian Succession Act³ has brought under its pro-^{Native}visions all native Christians,^{Christians.} whether they have or have not elected to remain subject to the Hindu law.⁴ In marriage and divorce also they cease by conversion to be governed by Hindu law.⁵

The illegitimate children of Hindu parents are within the^{Illegitimate} expression "Hindus."^{children.}

It has been held that the illegitimate children of a Hindu mother by a European father are to be treated as Hindus, if they have been brought up as such,⁶ but there is authority that where the mother is a non-Hindu the children cannot be treated as Hindus, even though the father is a Hindu.⁷

The mere circumstance that a man calls himself a Hindu is^{Profession of} not sufficient to entitle him to the application of Hindu law,^{Hinduism.} but in some cases, where the parties have followed the rules of Hindu law, that law may be applied as a rule of equity and good conscience.⁹

Conversion to Hinduism is said to be common in Northern and Southern India.¹⁰

As the Hindu law is a personal law, a Hindu is presumed to^{Who are} be governed by the school of law which governs the locality^{governed by} in which he resides.¹¹^{particular}
^{schools of law.}

(1885), 10 Bom. 1, and cases there cited; *Saboo Sidick (Haji) v. Ally Mahomed Jan Mahomed* (1904),⁸ 30 Bom. 270; 6 Bom. L. R. 1135; *Moosa Haji Joonas Noorani v. Abdul Rahim (Haji)* (1905), 30 Bom. 197; 7 Bom. L. R. 447; S. C. in Court below, *Abdul (Haji) v. Hamid (Haji)* (1903), 5 Bom. L. R. 1010.

¹ *Baiji (Bai) v. Santok (Bai)* (1894), 20 Bom. 53.

² *Fatesangji Jasvatsangji (Maharana Shri) v. Harisangji Fatesangji (Kuwar)* (1894), 20 Bom. 181; *Moosa Haji Joonas Noorani v. Abdul Rahim (Haji)* (1905), 30 Bom. 197; 7 Bom. L. R. 447.

³ Act X. of 1865, s. 331.

⁴ *Dagree v. Pacotti San Jao* (1895), 19 Bom. 783; *Ponnusami Nadan v. Dorasami Ayyan* (1880), 2 Mad. 209; *Joseph Vathiar of Nazareth* (1872), 7 Mad. H. C. 121; *Nepembala Devi v. Sitikanta Banerjee* (1910), 15 C. W. N. 158,

⁵ See Acts XV. of 1872 (Christian Marriage); IV. of 1869 (Divorce).

⁶ *Myna Boyee v. Ootaram* (1861), 8 M. I. A. 400; 2 W. R. P. C. 4; S. C. on remand (1864), 2 Mad. H. C. 196. See *Tara Chand v. Reeb Ram* (1866), 3 Mad. H. C. 50, at p. 53.

⁷ *Lingappa Goundan v. Esudasan* (1903), 27 Mad. 13. In that case the child was brought up as a Christian.

⁸ *Raj Bahadur v. Bishen Dayal* (1882), 4 All. 343, at p. 348.

⁹ *Ibid.* See also *Abraham v. Abraham* (1863), 9 M. I. A. 199, at p. 243; 1 W. R. P. C. 1, at p. 6. See *Muthusami Mudaliar v. Masilamani* (1909), 33 Mad. 342.

¹⁰ *Muthusami Mudaliar v. Masilamani* (1909), 33 Mad. 342, at p. 349.

¹¹ *Ram Das v. Chandra Dassia* (1892), 20 Calc. 409; *Jugo Bundhoo Tewaree v. Kurum Singh* (1874), 22 W. R. C. R. 341.

Families
governed by
law of origin.

If a Hindu migrates from one part of the country to another, the presumption is that he retains the laws and customs as to succession and family relations prevailing in the Province, from which he came,¹ at the time of the migration,² and is not subject to the particular Hindu law administered in the place to which he migrates, or to the customs prevalent there.³

This presumption also applies to migration from French India to British India.⁴

Such presumption may be rebutted by proof that the individual or his ancestors had adopted the law, usages, or religious ceremonies of the country of his residence.⁵

"It is not by looking merely at the performance of occasional local festivals that we can judge by what rule the family is governed. But we must look to the more important rites and ceremonies which are

¹ *Parbati Kumari Debi (Srimati Rani) v. Jagadis Chunder Dhabal* (1902), 29 I. A. 82; 29 Cal. 433; 6 C. W. N. 490; 4 Bom. L. R. 365 (see this case as to evidence supporting this presumption); *Ambabai v. Govind* (1898), 23 Bom. 257, at p. 263; *Soorendronath Roy v. Heeramonee Burmoneah* (1868), 12 M. I. A. 81; 1 B. L. R. P. C. 26; 10 W. R. P. C. 35; *Gridhari Lall Roy v. Bengal Government* (1868), 12 M. I. A. 448, at pp. 458, 459; 1 B. L. R. P. C. 44, at p. 46; 10 W. R. P. C. 31; *Rutheputty Dutt Jha v. Rajunder Narain Rae* (1839), 2 M. I. A. 133, at p. 168; *Pudmavati (Rany) v. Doolar Singh (Baboo)* (1847), 4 M. I. A. 259; 7 W. R. P. C. 41; *Govind Chandra Das v. Radha Kristo Das* (1909), 31 All. 477; *Lukkea Debea v. Gungagobind Dobey*, W. R. 1864, C. R. 56; *Huorpershad Roy Choudhry v. Shiba Shunkuree Chowdhraim* (1870), 13 W. R. C. R. 47; *Koomud Chunder Roy v. Seetakanth Roy* (1863), W. R. F. B. R. 75; *Sonotun Misser v. Rutun Mallah* (1864), W. R. 1864, C. R. 95; *Ootum Chunder Bhuttacharjee v. Obhoychurn Misser* (1862), W. R. F. B. R. 67; S. C. sub nomine *Junaruddeen Misser v. Nobin Chunder Perdham*, Marshall, 232; *Ram Bromo*

Pandah v. Kaminee Soonduree Dossee (1866), 6 W. R. C. R. 295; *Mailathi Anni v. Subbaraya Mudaliar* (1901), 24 Mad. 650. See *Chandika Bakhsh v. Muna Kuar* (1902), 29 I. A. 70; 24 All. 273; 3 C. W. N. 425; 4 Bom. L. R. 576.

² See *Vasudevan v. Secretary of State* (1887), 11 Mad. 157, at p. 162.

³ See *Byjnath Pershad v. Kopilmon Singh* (1875), 24 W. R. C. R. 95.

⁴ *Mailathi Anni v. Subbaraya Mudaliar* (1901), 24 Mad. 650.

⁵ See *Ram Bromo Pandah v. Kaminee Soonduree Dossee* (1866), 6 W. R. C. R. 295; *Parbati Kumari Debi (Srimati Rani) v. Jagadis Chunder Dhabal* (1902), 29 I. A. 82; 29 Cal. 433; 6 C. W. N. 490; 4 Bom. L. R. 365; *Soorendronath Roy v. Heeramonee Burmoneah* (1868), 12 M. I. A. 81, at p. 96; 1 B. L. R. (P. C.) 26, at p. 36; 10 W. R. P. C. 35, at p. 38; *Raj Chunder Narain Chowdry v. Goculchund Goh* (1801), 1 Ben Sel. R. 43 (new edition, 56); *Ootum Chunder Bhuttacharjee v. Obhoychurn Misser* (1862), W. R. F. B. R. 67; S. C. sub nomine *Junaruddeen Misser v. Nobin Chunder Perdham*, Marshall, 232; *Chundro Seekhur Roy v. Nobin Soondur Roy* (1865), 2 W. R. C. R. 197.

performed by them, namely, to those which attend births, marriages, and deaths in the family.”¹

Jains would ordinarily be governed by the Mitakshara school,² but Jains. it has been held that in the absence of evidence the Hindu law applicable in that part of the country in which they dwell would apparently be applicable.³ Sastri G. C. Sircar⁴ says, “The Jains of Bengal . . . are governed by the Mitakshara law of the country of their origin, and not by the Dayabhaga school prevailing here.”

CUSTOM.

In administering the Hindu law, the Courts are required Custom. to give effect to a custom, i.e. to a rule which in a particular family⁵ or in a particular caste or class,⁶ or in a particular district,⁷ has from long usage obtained the force of law.⁸

“Under the Hindu system of law clear proof of usage will outweigh the written text of the law.”⁹

In the following enactments this principle has been recognized by the Legislature :—

¹ *Huro Pershad Roy Chowdhry v. Shiba Shunkuree Chowdhraia* (1870), 13 W. R. C. R. 47. See *Pudmavati (Rany) v. Doolar Sing (Baboo)* (1847), 4 M. I. A. 259; 7 W. R. P. C. 41; *Login v. Princess Victoria Gouramma of Coorg* (1862), 1 Ind. Jur., O. S. 109.

² *Mandit Koer (Mussamat) v. Phool Chand Lal* (1897), 2 C. W. N. 154.

³ *Mohabeer Pershad (Lalla) v. Kundun Koowar (Mussamat)* (1867), 8 W. R. C. R. 116, at p. 118.

⁴ “Law of Adoption,” p. 353.

⁵ A family custom is called a *Kolāchār*. See *Urjun Sing (Rawut) v. Ghunsiam Sing (Rawut)* (1851),¹⁰ 5 M. I. A. 169; *Gunesh Dutt Singh (Baboo) v. Mookeshur Singh (Maharajah)* (1855), 6 M. I. A. 164; *Chintamun Singh (Chowdhry) v. Nowlukho Konwari (Mussamat)* (1875), 2 I. A. 263; 1 Calc. 153; 24 W. R. C. R. 255; *Nanaji Utpat (Bhau) v. Sundrabai* (1874), 11 Bom. H. C. 249, at pp. 269, 270.

⁶ For instance, the customs of the Nambhudri Brahmins; see *Vasudevan v. Secretary of State* (1887), 11 Mad. 157.

⁷ A local custom is called *Desāchār*.

Such custom is only applicable to persons domiciled in the place where it is in force; see *Padam Kumari v. Suraj Kumari* (1906), 28 All. 458.

⁸ *Hurpurshad v. Sheo Dyal* (1876), 3 I. A. 259, at p. 285; 26 W. R. C. R. 55, at p. 70; *Ramalakshmi Ammal v. Sivanantha Perumal Sethurayar* (1872), 14 M. I. A. 570, at p. 585; 1 A. Sup. vol. 1, at p. 3; 12 B. L. R. 396, at p. 398; 17 W. R. C. R. 553.

⁹ *Collector of Madura v. Moottoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 436; 1 B. L. R. P. C. 1, at p. 12; 10 W. R. P. C. 17, at p. 21; *Tara Chand v. Reeb Ram* (1866), 3 Mad. H. C. 50, at pp. 55–58; *Nanaji Utpat (Bhau) v. Sundrabai* (1874), 11 Bom. H. C. 249. See “Manu,” chap. i. paras. 108, 110; chap. viii. paras. 41, 46; “Mitakshara,” chap. i. s. 3, para. 4; “Dayatattwa,” chap. i. para. 33; “Mayukha,” chap. i. s. 1, para. 13. Dr. J. N. Bhattacharya (“Hindu Law,” 2nd ed., pp. 50, 51) contends that according to the true translation of Manu’s Code, custom does not prevail against an express provision of law.

Bom. Reg. IV. of 1827, s. 26; Madras Civil Courts Act (III. of 1873), s. 16; Lower Burma Courts Act (XI. of 1889), s. 4; Central Provinces Laws Act (XX. of 1875), s. 5; Oudh Laws Act (XVIII. of 1876), s. 3; Punjab Laws Act (IV. of 1872), s. 5, as amended by Act XII. of 1878, s. 1.

Conditions of
validity of
custom.

The Courts cannot give effect to a custom unless it be ancient,¹ definite,² continuous,³ notorious,⁴ and reasonable.⁵ It is invalid if it be opposed to an express enactment of the Legislature,⁶ to morality, to public policy,⁷ or to justice,

¹ *Hurpurshad v. Sheo Dyal* (1876), 3 I. A. 259, at p. 285; 26 W. R. C. R. 55, at p. 70; *Rumalakshmi Ammal v. Sivanantha Perumal Sethurayar* (1872), 14 M. I. A. 570, at pp. 585, 586; I. A. Sup. vol. I, at p. 3; 12 B. L. R. 396, at p. 398; 17 W. R. C. R. 553. S. C. in court below; *Sivananjanja Perumal Sethurayar v. Muttu Ramalinga Sethurayar* (1866), 3 Mad. H. C. 75, at p. 77; *Nugendur Narain (Rajah) v. Rughoonath Narain Dey*, W. R. 1864, p. 20, at p. 23.

² Or, as it may be expressed, certain, precise, and conclusive. *Hurpurshad v. Sheo Dyal* (1876), 3 I. A. 259, at p. 285; 26 W. R. C. R. 55, at p. 70; *Ramakanta Das Mahapatra v. Shamanand Das (Chowdhuri)* (1908), 36 I. A. 49; 36 Calc. 590; 13 C. W. N. 581; 11 Bom. L. R. 530; *Rajkishen Singh v. Ramjoy Surma Mozoomdar* (1872), 1 Calc. 186, at pp. 195, 196; 19 W. R. C. R. 8, at p. 11; *Bhagawan Das v. Balgobind Sing* (1868), 1 B. L. R. S. N. ix.; *Doorga Pershad Singh (Tekacet) v. Doorga Kooeree (Tekacetnee)* (1873), 20 W. R. C. R. 154, at p. 157.

³ In other words, uniform, uninterrupted, invariable. *Nugendur Narain (Rajah) v. Rughoonath Narain Dey*, W. R. 1864, p. 20, at p. 24; *Rumalakshmi Ammal v. Sivanantha Perumal Sethurayar* (1872), 14 M. I. A. 570, at pp. 585, 586; I. A. Sup. vol. I, at p. 3; 12 B. L. R. 396, at p. 398; 17 W. R. C. R. 553; S. C. in Court below, *Sivananjanja Perumal Sethurayar v. Muttu Ramalinga Sethurayar* (1866), 3 Mad. H. C. 75, at p. 77; *Gopalayyan v. Raghupatiayyan* (1873), 7 Mad. H. C. 250, at p. 254;

Soorendronath Roy v. Heeramonee Burmoneah (1868), 12 M. I. A. 81, at p. 91; 10 W. R. P. C. 35, at p. 36; *Rajkishen Singh (Rajah) v. Ramjoy Surma Mozoomdar* (1872), 1 Calc. 186, at p. 195; 19 W. R. C. R. 8, at p. 11; *Jugmohandas Mangaldas v. Mangaldas Nathubhoy (Sir)* (1886), 10 Bom. 528, at p. 543. See *Amrit Nath Chowdhry v. Gauri Nath Chowdhry* (1870), 6 B. L. R. 232, at p. 238; *Jameelah Khatoon v. Pegul Ram* (1864), 1 W. R. C. R. 250; *Vandaraan Jekisan (Patel) v. Manilal Chuni-lal (Patel)* (1891), 16 Bom. 470, at p. 476.

⁴ See *Juggomohun Ghose v. Manickchund* (1859), 7 M. I. A. 263, at p. 282; 4 W. R. P. C. 8, at p. 10; *Gopalayyan v. Raghupatiayyan* (1873), 7 Mad. H. C. 250, at p. 254.

⁵ *Hurpurshad v. Sheo Dyal* (1876), 3 I. A. 259, at p. 285; 26 W. R. C. R. 55, at p. 70; *Lutchmeeput Singh v. Sadarulla Nushyo* (1882), 9 Calc. 698, at p. 703; 12 C. L. R. 382, at p. 388.

⁶ As for instance when the dedication of minors as dancing-girls of a pagoda amounts to an offence under ss. 372 and 373 of the Indian Penal Code (Act XLV. of 1860). *Ex parte Padmavati* (1870), 5 Mad. H. C. 415; *Queen Empress v. Ramanna* (1889), 12 Mad. 273; *Srinivasa v. Annasami* (1892), 15 Mad. 323; *Reg. v. Jaili Bhavin* (1869), 6 Bom. H. C. Cr. C. 60.

⁷ *Chinna Ummayi v. Tegarai Chetti* (1876), 1 Mad. 168. See also *Sankaralingam Chetti v. Subban Chetti* (1894), 17 Mad. 479; *Ghasiti v. Umrao Jan* (1893), 20 I. A. 193;

equity, and good conscience.¹ A custom must be established by clear and unambiguous proof,² and must be construed strictly.³

With the exception of an old decision in Calcutta,⁴ by Grey, C.J., *Ancient*, which fixed 1773, the date of the Act of Parliament which established the Supreme Court, and 1793 the date when Regulations commenced to be registered as the time for the commencement of legal memory in Calcutta, and the Mofussil respectively, there is no decision which has professed to define the expression "ancient." That expression is apparently coincident with the expression "from time immemorial."⁵

"What the law requires before an alleged custom can receive the recognition of the Court, and so acquire legal force, is satisfactory proof of usage so long and invariably acted upon in practice as to show that it has by common consent been submitted to as the established governing

21 Calc. 149; This is expressed by "Manu," chap. viii. para. 41, as "if they be not repugnant to the law of God."

¹ See *Vurmah Valiar (Rajah) v. Ravi Vurmah Mutha* (1876), 4 I. A. 76; 1 Mad. 235. Oudh Laws Act (XVIII. of 1876), s. 3; Punjab Laws Act (XII. of 1878), s. 1. As to marriage brokerage contracts, see *post*, p. 48.

² *Ramalakshmi Ammal v. Sivananiha Perumal Sethurayar* (1872), 14 M. I. A. 570, at pp. 585, 586; I. A. Sup. vol. 1, at p. 3; 12 B. L. R. 396, at p. 398; 17 W. R. C. R. 553. S. C. in Court below; *Sivanananja Perumal Sethurayar v. Muttu Ramalinga Sethurayar* (1866), 3 Mad. H. C. 75, at p. 77; *Nugendur Narain (Rajah) v. Rughoonath Narain Dey*, W. R. 1864. p. 20, at p. 23; *Serumah Umah v. Palathan Vitil Mary Coothy Umah* (1871), 15 W. R. P. C. 47; *Luchmun Lall v. Mohun Lall Bhaya Gayal* (1871), 16 W. R. C. R. 179; *Shidhojirav v. Naskojirav* (1873), 10 Bom. H. C. 228; *Vandrayan Jekisan (Patel) v. Manilal Chunilal (Patel)* (1891), 16 Bom. 470. See *Amrit Nath Chowdhry v. Gauri Nath Chowdhry* (1870), 6 B. L. R. 232, at p. 238; *Neelkisto Deb Burmono v. Beerchunder Thakoor* (1869), 12 M. I. A. 523, at p. 542; 3 B. L. R. (P. C.) 13, at p. 19; 12 W. R. P. C. 21, at p. 24; *Bhagvandas Tejmal v. Rajmal*

(1873), 10 Bom. H. C. A. C. 241; *Lakshmappa v. Ramava* (1875), 12 Bom. H. C. 362, at p. 383.

³ *Hurpurshad v. Sheo Dyal* (1876), 3 I. A. 259, at p. 285; 26 W. R. C. R. 55, at p. 70.

⁴ Clarke's "Reports," pp. 113, 114. Sircar's "Vyavastha Darpana," 2nd ed., p. 314. The reason for this decision was that from the dates mentioned the powers of making laws were vested in the British Legislature. Sir G. D. Banerjee ("Law of Marriage," 2nd ed., p. 224), questions the correctness of the above-mentioned decision of Grey, C.J., and adds, "We may at any rate fairly say, that in the Hindu law, not only is it unnecessary to trace back the existence of a custom to any definite date, but even the indefinite condition of being ancient may, in favour of some classes of customs, have to be dispensed with." It certainly seems unreasonable thus to fetter the growth of customs, which are encouraged by the Hindu law, and which are a means by which that law can be adapted to modern requirements.

⁵ See *Luchmun Lall v. Mohun Lall Bhaya Gayal* (1871), 16 W. R. C. R. 179; *Umritnath Chowdhry v. Goureenath Chowdhry* (1870), 13 M. I. A. 542, at p. 549; 15 W. R. P. C. 10, at p. 12. S. C. in Court below, 6 B. L. R. 232.

rule of the particular family, class, or district or country."¹ Such proof raises a presumption that the usage was an ancient one.²

Discontinu-
ance of
custom.

So far as continuity is concerned there seems to be a distinction between a family custom and a local custom. In the former case it is competent to the family to discontinue the custom, as for instance a custom of impartibility,³ or it may have been accidentally discontinued.⁴ In the latter case the omission of individuals to follow the custom could not have the effect of destroying it, as it is a part of the *lex loci*, and binds all persons within the local limits in which it prevails.⁵

When the custom has been proved the burden is upon the party alleging the discontinuance to prove that fact.⁶

New grant of
property
formerly im-
partible.

A family custom that property should remain impartible, is not necessarily destroyed by a new grant being made by the Government to a member of the family,⁷ but where a new tenure is created, and there is nothing in the circumstances under which the new grant was made to lead to the inference that the Government had in view in making the new grant the creation of an impartible zemindari as an exception to the ordinary rule of the Hindu law, the ordinary rules of Hindu law apply.⁸

A family custom is personal, and does not apply to subsequent owners of the land held by the family.⁹

Immorality.

The following are illustrations of customs which have been held void for immorality:—

A custom allowing a woman to remarry during the lifetime of her husband and without his consent.¹⁰

A custom for dancing-girls to adopt daughters under circumstances

¹ *Sivunananja Perumal Sethurayar v. Muttu Ramalinga Sethurayar* (1866), 3 Mad. H. C. 75, at p. 77. S. C. on appeal, *Ramalakshmi Ammal v. Sivunantha Perumal Sethurayar* (1872), 14 M. I. A. 570; 1 A. Sup. vol. 1; 12 B. L. R. 396; 17 W. R. (C. R. 553; *Shidhojirao v. Naikojirao* (1873), 10 Bom. H. C. 228, at p. 234.

² See *Ramasami v. Appavu* (1887), 12 Mad. 9, at p. 14; *Nanaji Utpat (Bhau) v. Sundrabai* (1874), 11 Bom. H. C. 249.

³ It was assumed that such discontinuance was possible in *Lekhraj Kunwar (Thakurain) v. Harpal Singh (Thakur)* (1911), 39 I. A. 10; 34 All. 65; 16 C. W. N. 217; 14 Bom. L. R. 33.

⁴ *Rajkishan Singh v. Ramjoy Surma Mozoomdar* (1872), 1 Calc. 186, at p. 195; 19 W. R. (C. R. 8, at p. 12; *Sarabjit Partap Bahadur Sahi v. Indarjit Partap Bahadur Sahi* (1904), 27 All. 203.

⁵ *Rajkishan Singh v. Ramjoy Surma Mozoomdar* (1872), 1 Calc. 186,

at p. 195; 19 W. R. (C. R. 8, at p. 12.

⁶ *Sarabjit Partap Bahadur Sahi v. Indarjit Partap Bahadur Sahi* (1904), 27 All. 203.

⁷ See *Beer Pertab Sahce (Baboo) v. Rajender Pertab Sahce (Maharajah)* (1867), 12 M. I. A. 1; 9 W. R. P. C. 15; *Mutta Vaduganadhu Tevar v. Dorasinga Tevar* (1881), 8 I. A. 99; 3 Mad. 290; *Jaganatha v. Ramabhadra* (1888), 11 Mad. 380; *Kachi Yuva Rangappa Kallakka Thola Udayar v. Kachi Kalyana Rangappa Kallakka Thola Udayar* (1901), 24 Mad. 562.

⁸ *Merangi, Zemindar of, v. Satru-charla Ramabhadra Razu (Sri Rajah)* (1891), 18 I. A. 45, at p. 53; 14 Mad. 237, at p. 245; *Venkata Narasimha Appa Row Bahadur (Rajah) v. Narayya Appa Row Bahadur (Rajah)* (1879), 7 I. A. 38; 2 Mad. 128; 6 C. L. R. 153.

⁹ *Gopal Das Sindh v. Nurotum Sindh* (1845), 7 Ben. Sel. R. 195 (2nd ed., 230).

¹⁰ *Post*, p. 32.

which would amount to a traffic in minors as prohibited by ss. 372 and 373 of the Indian Penal Code;¹ but except where the recognition of the rights alleged would countenance such a traffic, or the usage is in itself immoral,² the Courts will give effect to the rights of dancing-girls attached to Hindu temples in respect of endowments for their support,³ and also to the peculiar usages of the dancing-girl and prostitute classes with regard to adoption⁴ and succession.⁵

A custom will not be applied unless those following the custom are convinced in conscience that they are acting in accordance with law.⁶

Judicial recognition is not a condition precedent to the validity of a custom,⁷ but such recognition may be of great value as evidence of the existence of that custom.⁸ Judicial recognition.

In the case of persons governed generally by the Hindu law, the burden of proving a custom derogatory to that law lies upon the person who asserts it.⁹ Burden of proof of custom.

If it be shown that a custom applies to a particular class or community the burden of showing that the individual member is not bound by it lies upon the person asserting such exception.¹⁰

¹ Act XLV. of 1800.

² *Chinna Ummayi v. Tegarai Chetti* (1876), 1 Mad. 168.

³ *Tara Naikin v. Nana Lakshman* (1889), 14 Bom. 90; *Kanniam v. Sadagopa Sami* (1878), 1 Mad. 356; *Mathura Naikin v. Eru Naikin* (1880), 4 Bom. 545, at p. 505. See *Chinna Ummayi v. Tegarai Chetti* (1876), 1 Mad. 168.

⁴ *Post*, pp. 157, 158.

⁵ *Tara Munnee Dossea v. Motee Buneanee* (1846), 7 Ben. Sel. R. 273 (2nd ed., 325); *Sivasangu v. Minal* (1889), 12 Mad. 277; *Kamakshi v. Nagarathnam* (1870), 5 Mad. H. C. 161.

⁶ *Gopalayyan v. Raghupatiayyan* (1873), 7 Mad. H. C. 250, at p. 254. See *Vandrayan Jekisan (Patel) v. Manilal Churnilal (Patel)*, (1891), 16 Bom. 470, at p. 476.

⁷ See Mayne's "Hindu Law," 7th ed., pp. 56-58. In *Narasammal v. Balaramachariu* (1863), 1 Mad. H. C. 420, at p. 424, Holloway, J., said, "A very short experience will suffice to satisfy any judge that a pundit will always overcome a passage of Hindu law too stubborn for other manipulation by the often baseless allegation of custom." He proceeds to say, "And in our judgment no

custom, how long soever continued, which has never been judicially recognized, can be permitted to prevail against distinct authority." It is submitted that this last proposition cannot be supported.

⁸ See Act I. of 1872, s. 42.

⁹ *Bhagwan Singh v. Bhagwan Singh* (1899), 26 I. A. 153, at p. 165; 21 All. 412, at p. 423; 3 C. W. N. 454, at p. 459; 1 Bom. L. R. 311; *Chandika Baksh v. Muna Kuar* (1902), 29 I. A. 70; 24 All. 273; 6 C. W. N. 425; 4 Bom. L. R. 376; *Fanindra Deb Raikut v. Rajeswar Dass* (1885), 12 I. A. 72, at p. 81; 11 Cal. 463, at p. 476; *Basava v. Lingangauda* (1894), 19 Bom. 428, at p. 473; *Desai Ranchhodas v. Rawal-Nathubai* (1895), 21 Bom. 110, at pp. 116, 117; *Bhagvandas Tejmal v. Rajmal* (1873), 10 Bom. H. C. 241, at p. 260; *Narayan Babaji v. Nana Manohar* (1870), 7 Bom. H. C. A. C. 153, at p. 175; *Mahendra Singh (Rajah) v. Jokha Singh* (1873), 19 W. R. C. R. 211; *Jeetnath Sahee Deo (Thakoor) v. Lokenath Sahee Deo* (1873), 19 W. R. C. R. 239; and cases, *ante*, p. 25, note 2.

¹⁰ See *Gitabai v. Shivabhas* (1902), 4 Bom. L. R. 378.

In the case of a tribe or family which are not originally Hindu, but which has adopted Hinduism, the burden of proving that the family is governed in a particular matter by the Hindu law is upon the person who asserts that it is so governed.¹

As to proof of the devolution of an impartible Raj, see *Mohesh Chunder Dhal v. Satrugan Dhal* (1902), 29 I. A. 62; 29 Calc. 343; 6 C. W. N. 459; 4 Bom. L. R. 372.

As to proof of the customs of Jains, see *Harnabh Pershad v. Mandil Dass* (1899), 27 Calc. 379.

As to the mode of proof of a custom, see Act I. of 1872, ss. 13, 32, 42, 48, 49.

"The kind of evidence that ought to be regarded is evidence showing that the right claimed by custom was more or less contested and the contest abandoned by some one who, if the custom had not existed, would have been entitled, or evidence showing that generally in the district the custom was followed to the exclusion of persons who, if it had not been for the custom, would presumably have enforced the right under the general law."² Decrees and an understanding in the family,³ entries in village records, and answers to official inquiries⁴ declarations of the heads of families⁵ are all evidence.

¹ As, for instance, the law of adoption, *Fanindra Deb Raikat v. Rajeswar Dass* (1885), 2 I. A. 72, at p. 81; 11 Calc. 463, at p. 476.

² *Rama Nand v. Surgiani* (1894), 16 All. 221, at p. 223.

³ *Mohesh Chunder Dhal v. Satrugan Dhal* (1902), 29 I. A. 62; 29 Calc. 343; 6 C. W. N. 459; 4 Bom. L. R. 372.

⁴ *Parbati Kunwar v. Chandarpal*

Kunwar (Rani) (1909), 36 I. A. 125; 31 All. 457; 13 C. W. N. 1073; 11 Bom. L. R. 890. As to a *wajib ul arz*, see *Anant Singh (Thakur) v. Durga Singh (Thakur)* (1910), 37 I. A. 191; 32 All. 363; 14 C. W. N. 770; 12 Bom. L. R. 504.

⁵ *Hiranath Koer (Maharani) v. Ram Narayan Sing (Baboo)* (1872), 9 B. L. R. 224; 17 W. R. C. R. 316.

CHAPTER I.

HUSBAND AND WIFE.

MARRIAGE.

THE relationship of husband and wife is created by a marriage, entered into by two persons, who are each competent; according to Hindu law, to enter into the state of marriage,¹ and who are not debarred by that law from intermarrying,² such marriage being performed with the ceremonies prescribed by that law.³

According to Hindu ideas, marriage has for its object the performance of religious duties. It is a *sanskar*, that is, an essential ceremony, held indispensable to constitute the perfect purification of a Hindu.⁴ It is the last of the ten *sanskars* necessary for the regeneration of males of the twice-born classes,⁵ and is the only one prescribed for women and for *Sudras*.⁶

Marriage is essential to a Hindu in order that by begetting a son he may be delivered from the hell called *put*, to which the shades of a sonless man, are, according to Hindu ideas, doomed,⁷ that he may repay the debt he owes to his forefathers,⁸ and that he may be able to perform such of the most important religious acts.⁹

It is the imperative religious duty of a father, or other guardian,¹⁰ to cause a girl to be married, before she attains puberty, to a suitable husband, capable of procreating children.¹¹ There is, however, no legal obligation.¹²

¹ *Post*, pp. 30-34.

² *Post*, pp. 34-42.

³ *Post*, pp. 54-56.

⁴ Wilson's "Glossary," p. 463.

⁵ Colebrooke's "Digest," vol. iii., p. 104, note.

⁶ Colebrooke's "Digest," vol. iii., p. 95. See *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 316, at p. 318; *Kameswara Sastri v. Veerachariu* (1910) 34 Mad. 422.

⁷ "Manu," chap. ix. para. 138; "Dayabhaga," chap. v. para. 6; "Dattaka Mimansa," chap. i. para. 5; Colebrooke's "Digest," vol. iii. pp. 158, 293, 294.

⁸ "Dattaka Mimansa," chap. i. para. 5.

⁹ Bhattacharya's "Hindu Law," 2nd ed., p. 81.

¹⁰ As to the persons upon whom the duty devolves, see *post*, pp. 42-47.

¹¹ *Jumona Dassya Chowdhurani v. Bamasoonderei Dassya Chowdhurani* (1878), 3 I. A. 72, at p. 78; 1 Calc. 289, at pp. 294, 295; 25 W. R. C. R. 235, at p. 236; *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 316, at p. 322.

¹² *Sundari Ammal v. Subramania Ayyar* (1902), 26 Mad. 505.

Duty of
guardian of
boy.

Although the law permits the marriage of boys who have not attained majority,¹ and marriage is a religious necessity for them,² such marriages by male minors do not seem to have been contemplated by the sages and early writers on Hindu law.³ There is, it is submitted, a moral or religious obligation upon a parent, or other guardian, to provide a wife for a boy, as there is to provide a husband for a girl,⁴ and there is a right to provide for his marriage, and for its expenses.⁵

WHO MAY MARRY.

Who are
competent to
marry.

Unless expressly prohibited by a provision of the Hindu law, any male Hindu is competent to marry, and every unmarried Hindu female is competent to be given in marriage.⁶

A *garbari gosavi* is competent to contract a valid marriage.⁷

The Hindu law regards the bridegroom as the person who marries, and the bride as the person who is taken in marriage.⁸

Defects.

Physical and mental defects, even if they be such as to cause exclusion from inheritance,⁹ do not invalidate a marriage.¹⁰

Lunacy.

Unsoundness of mind does not invalidate a marriage.

"To put it at the highest, the objection to a marriage on the ground of mental incapacity must depend upon a question of degree."¹¹

¹ *Post*, p. 31.

² *Ante*, p. 29. *Sundrabai v. Shrinarayana* (1907), 32 Bom. 81; 9 Bom. L. R. 1366.

³ "Manu," chap. ix. para. 94; Bhattacharya's "Hindu Law," 2nd ed., pp. 81, 82. See Banerjee's "Law of Marriage," 2nd ed., p. 35.

⁴ See *Kameswara Sastri v. Verracharlu* (1910), 34 Mad. 422; and *Sundrabai v. Shrinarayana* (1907), 32 Bom. 81; 9 Bom. L. R. 1366; dissenting from *Govindarazulu Narasimham v. Devarabholla Venkatanarasayya* (1903), 27 Mad. 206.

⁵ *Kameswara Sastri v. Verracharlu* (1910), 34 Mad. 422; *Govindarazulu Narasimham v. Devarabholla Venkatanarasayya* (1903), 27 Mad. 206, see *post*, p. 49.

⁶ Banerjee's "Law of Marriage," 2nd ed., 33.

⁷ *Gitabai v. Shivbakas* (1903), 5

Bom. L. R. 318.

⁸ Banerjee's "Law of Marriage," 2nd ed., 34; Bhattacharya's "Hindu Law," 2nd ed., 81.

⁹ As to the physical defects which cause exclusion from inheritance, see Bhattacharya's "Hindu Law," 2nd ed., 349-351; Siroar's "Hindu Law," pp. 232-235; Mayne's "Hindu Law," 7th ed., pp. 806-809, and cases there cited; *post*, pp. 354-357.

¹⁰ "Manu," chap. ix. para. 203; "Mitakshara," chap. ii. s. 10, paras. 9-11; "Vivada Chintamani" (P. C. Tagore's translation), p. 244; "Vyavahara Mayukha," chap. v. s. 11, para. 11, "Smriti Chandrika," chap. v. para. 32.

¹¹ *Mouji Lal v. Chandrabati Kumari* (*Musammat*) (1911), 38 I. A. 122, at p. 125; 38 Calc. 700, at p. 706; 15 C. W. N. 790, at p. 793; 13 Bom. L. R. 534, at p. 541.

Pundits both in Bengal¹ and Bombay² have given opinions that it does not invalidate a marriage. Sir G. D. Banerjee points out that "there are indications in the law from which it would appear that lunatics are considered competent to marry,"³ but he also says⁴ that, as a lunatic is incompetent to accept the gift of a bride, it is not easy to understand how his marriage can be regarded as marriage at all.

The question of mental incapacity is one of degree. The Court will presume in favour of the validity of the marriage, and the legitimacy of the children.⁵

The ancient authorities permitted a eunuch to marry on the ground of impotence, that his wife could raise up a son to him by a man legally appointed⁶ but now that the system of *niyoga*⁷ is obsolete, it may be a question whether the Courts will not declare the marriage of an impotent person to be void.⁸

Except that in the case of the twice-born classes marriages cannot take place before investiture with the sacred thread,⁹ a male Hindu of any age can marry.¹⁰

A female Hindu of any age can be given in marriage.¹¹

The Hindu religion requires a girl to be given in marriage before she attains the age of puberty,¹² but there is nothing in the Hindu law to invalidate the marriage of a woman who has attained puberty.¹³

As to the necessity for the consent of a guardian in the case of the marriage of minors, see *post*, pp. 42-47.

¹ See *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 316, at p. 318; *Dabychurn Mitter v. Radhachurn Mitter* (1817), 2 Morl. Dig. 99.

² West and Bühler's "Hindu Law," 2nd ed., p. 274.

³ "Law of Marriage," 2nd ed., p. 30; "Manu," chap. ix. para. 203; "Daya Bhaga," chap. v. para. 18; "Mitakshara," chap. ii. s. 10, paras. 9-11; "Vivada Chintamani" (P. C. Tagore's translation), p. 244; "Smriti Chandrika," chap. v. para. 32; "Vyavahara Mayukha," chap. iv. s. 11, para. 11.

⁴ P. 37.

⁵ *Mouji Lal v. Chandrabati Kumari (Musammat)* (1911), 38 I. A. 122; 38 Calc. 700; 15 C. W. N. 790; 13 Bom. L. R. 534.

⁶ "Manu," chap. ix. para. 203; "Daya Bhaga," chap. v. para. 18.

⁷ *Post*, pp. 96, 134.

⁸ See Banerjee's "Law of Marriage," 2nd ed., pp. 38, 39; Parasara, quoted in Vidyasagar's "Mar-

riage of Hindu Widows," pp. 4, 7. Steele, p. 167; *Kanaki Ram v. Biddya Ram* (1878), 1 All. 549, at p. 551.

⁹ The rule is that the investiture of a *Brahmin* should take place in the eighth, that of a *Kshatrya* in the eleventh, and that of a *Vaisya* in the twelfth year from his conception, "Manu," chap. ii. para. 36.

¹⁰ Banerjee's "Law of Marriage," 2nd ed., 35. Bhattacharya's "Hindu Law," 2nd ed., 82. See *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 316, at p. 318.

¹¹ Sir G. D. Banerjee ("Law of Marriage," 2nd ed., 43) says, "Ordinarily the lowest age for marriage is eight years, but Manu allows a girl to be married even before the proper age, if a proper union is secured" ("Manu," chap. ix. para. 38, and note by Kulluka).

¹² *Ante*, p. 29.

¹³ Banerjee's "Law of Marriage," 2nd ed., 43.

Polygamy.

A Hindu ¹ may at his pleasure marry any number of wives, although he has a wife or wives living.²

No effect can be given to an agreement purporting to avoid a marriage on the taking of a second wife during the lifetime of the first,³ and apparently an agreement not to enter into such second marriage would be against the policy of the Hindu Law.⁴

Contracting a second marriage during the lifetime of the wife is called *adhivedana*, or supersession, but does not in any way imply that the first wife is deserted.⁵

The Hindu writers prescribe that a present (*adhivedanika*) should be given to the wife as compensation for her supersession, but they do not agree as to the amount.⁶ Such compensation could not apparently be claimed in a Court of law.

Christian.

A Hindu, who has become a Christian, cannot take to himself another wife while his wife is alive.⁷

He can do so on his return to Hinduism.⁸

Bigamy of women.

A woman cannot marry another man while her husband is alive.⁹

Although the Courts will not recognize a custom which permits a wife at her pleasure to desert her husband and marry another man,¹⁰ at

¹ Even if he has at one time professed Christianity, 3 Mad. H. C. App. vii.

² See *Virasvami Chetti v. Appasvami Chetti* (1863), 1 Mad. H. C. 375; *Arumugam v. Thulukanam* (1883), 7 Mad. 187, at p. 188; *Thapita Peter v. Thapita Lakshmi* (1894), 17 Mad. 235, at p. 239; *Huree Bhaee Nana v. Nuthoo Koober* (1810), 1 Borr. 59; Banerjee, "Law of Marriage," 2nd ed., pp. 39, 40, 128; "Daya Bhaga," chap. ix. para. 6, note; Sircar's "Vyavastha Darpana," p. 672. Polygamy is not permitted to members of the *Brahmo Samaj*; *Sonaluxmi v. Vishnuprasad Hariprasad* (1903), 28 Bom. 597; 6 Bom. L. R. 58.

³ *Sitaram v. Aheeree Heerahnee (Mussamut)* (1873), 11 B. L. R. 129; 20 W. R. C. R. 49.

⁴ See *ibid.*, per Kemp, J., 11 B. L. R., at p. 135; 20 W. R. C. R., at p. 50. Would it not be, from the Hindu point of view, an agreement in restraint of marriage, and therefore void under s. 26 of the Indian Contract Act (IX. of 1872)?

⁵ See "Mitakshara," chap. ii. s. 11 paras. 2 (note) and 35; *Emperor v. Lazar* (1907), 30 Mad. 550.

⁶ See Banerjee's "Law of Marriage," 2nd ed., p. 130; "Mitakshara," chap. ii. s. 11, para. 35; "Biyakrama Sangraha," chap. vi. para. 31; Colebrooke's "Digest," vol. iii. p. 561.

⁷ See *Thapita Peter v. Thapita Lakshmi* (1894), 17 Mad 235; *Ante*, p. 20, note 1.

⁸ *Emperor v. Anthony* (1910), 33 Mad. 371; (1866), 3 Mad. H. C. App. vii. See, however, *Emperor v. Lazar* (1907), 30 Mad. 550.

⁹ *Thapita Peter v. Thapita Lakshmi* (1894), 17 Mad. 235, at p. 239. "Manu," chap. viii. para. 226; chap. ix. paras. 46, 47, 71. See *Sinammal v. Administrator-General of Madras* (1885), 8 Mad. 169, at p. 173.

¹⁰ *Narayan Bharthi v. Laving Bharthi* (1877), 2 Bom. 140; *Reg. v. Sambhu Raghu* (1876), 1 Bom. 347; *Reg. v. Karsan Goja* (1864), 2 Bom. H. C. 124; *Uji v. Hathi Lahu* (1870),

any rate where the first husband did not consent to the second marriage,¹ it would apparently give effect to a custom permitting such remarriage on desertion by the husband.² A custom authorizing such remarriage in case of the husband's prosy might also be valid.³ No effect could be given to the decision of a *panchayet* or of a caste which authorizes a remarriage,⁴ except, perhaps, where by custom a valid divorce could be effected by such decision.⁵

Where divorce is permissible by custom,⁶ or where a divorce has been decreed under Act XXI. of 1866,⁷ a woman can remarry. Remarriage after divorce.

The marriage of a girl, who has been betrothed⁸ (but not married) to another man, is valid.⁹ Betrothed girl.

A widow can remarry.¹⁰

Remarriage of widow.

As to the forfeiture of her rights on remarriage, see *post*, pp. 353, 354.

Except in the case of a special custom¹¹ the remarriage of widows was prohibited by the Hindu law, which was in force at the time of the passing of Act XV. of 1856.¹²

The Hindu law placed certain restrictions upon marriage by rules, which are now treated as operating only as moral injunctions. Moral injunctions.

Impurity arising from the birth or death of a relation was treated as a disqualification.¹³

The marriage of a younger brother before an elder brother,¹⁴ or of a younger sister before an elder sister,¹⁵ was prohibited.

7 Bom. H. C. A. C. J. 133; *Reg. v. Manohar Raiji* (1868), 5 Bom. H. C. Cr. C. 17. See in the matter of *Chamia (Musst)* (1880), 7 C. L. R. 354.

¹ See *Khemkor v. Umiasankar Ranchhor* (1873), 10 Bom. H. C. 381.

² *Virasangappa v. Rudrappa* (1885), 8 Mad. 440. See *Sinammul v. Administrator-General of Madras* (1885), 8 Mad. 169, at p. 173.

³ See *Reg. v. Sambhu Raghu* (1876), 1 Bom. 347, at p. 352.

⁴ See *Bisuran Koiree v. The Empress* (1878), 3 C. L. R. 410, at p. 413; *Reg. v. Sambhu Raghu* (1876), 1 Bom. 347.

⁵ See *post*, p. 59.

⁶ *Post*, p. 59.

⁷ *Post*, p. 60.

⁸ *Post*, p. 54.

⁹ *Lakhi Priya v. Bhairab Chandra Chaudhuri* (1835), 5 Bon. Sel. R. 315 (2nd ed., 369); *Khooshal v. Bhugwan*

Motee (1813), 1 Borr. 138. See Act XV. of 1856, s. 1.

¹⁰ Act XV. of 1856, s. 1.

¹¹ Strange's "Hindu Law," vol. ii. p. 400. As to such customs, see Banerjee's "Law of Marriage," 2nd ed., pp. 235-237; Mayne's "Hindu Law," 7th ed., pp. 113-116.

¹² "Manu," chap. v. paras. 157, 161; Strange's "Hindu Law," vol. i. pp. 37, 241, vol. ii. p. 400; Sircar's "Vyavastha Darpana," p. 647. In *Vithu v. Govinda* (1896), 22 Bom. 321, at p. 331, Ranade, J., says that the prohibition only extended to the three superior castes.

¹³ See Banerjee's "Law of Marriage," 2nd ed., p. 101.

¹⁴ Banerjee's "Law of Marriage," 2nd ed., p. 41; Bhattacharya ("Hindu Law," 2nd ed., p. 83) says that this rule is imperative.

¹⁵ Banerjee's "Law of Marriage," 2nd ed., pp. 53, 54.

For other instances, see Banerjee's "Law of Marriage," 2nd ed., pp. 52, 54; Bhattacharyya's "Hindu Law," 2nd ed., pp. 85, 86.

WHO MAY INTERMARRY.

Restrictions
on inter-
marriage.

The following rules¹ as to identity of caste, exogamy, and prohibited degrees have been deduced from texts of the sages by Raghunandana,² who is said to be the highest authority in Bengal in all matters excepting inheritance,³ and are reiterated by Kamalakara Bhatta in the *Nirnaya Sindhu*,⁴ which is said to be of authority in the Benares school,⁵ in the Bombay Presidency,⁶ and in Southern India.⁷

Identity of
caste.

1. Intermarriage between persons not belonging to the same primary caste is void.⁸

Subdivisions
of caste.

This rule only prevents intermarriage between the four primary castes.⁹ It does not prevent marriage between persons belonging to different subdivisions of the same primary caste.¹⁰

¹ For a discussion of these rules, see Sarkar's "Hindu Law," 3rd ed., pp. 57-60.

² In his "Udvahatattwa."

³ Bhattacharya's "Hindu Law," 2nd ed., 36.

⁴ Sarkar's "Hindu Law," 3rd ed., p. 92.

⁵ *Ibid.*, Bhattacharya's "Hindu Law," 2nd ed., 37.

⁶ Mandlik's "Vyavahara Mayukha" Introduction, p. 73; Bhattacharya's "Hindu Law," 2nd ed., 37.

⁷ Bhattacharya's "Hindu Law," 2nd ed., 37.

⁸ *Padam Kumari v. Suraj Kumari* (1906), 28 All. 458; *Melaram Nudial v. Thanooram Bamun* (1868), 9 W. R. C. R. 552; *Lakshmi v. Kiliansing* (1900), 2 Bom. L. R. 128; Bhattacharya's "Hindu Law," 2nd ed., p. 85; Steele, pp. 26, 29, 30; Colebrooke's "Digest," vol. iii. p. 141; "Vyavastha Darpana," 656; Strange's "Hindu Law," vol. i. 40; "Mitakshara," chap. i. s. 11, para. 2, and note. See *Ram Lal Shookool v. Akhoy Charan Mitter* (1903), 7 C. W. N. 619. In that case the judges assumed that *Vaidyas* were *Vaisyas*. As to the position of *Vaidyas*, see Bhattacharya's

"Hindu Castes and Sects," pp. 159-171; Risley's "Tribes and Castes of Bengal," vol. i. pp. 46-50.

⁹ *Ante*, p. 19.

¹⁰ *Indurun Valungyypooly Taver v. Ramaswamy Pandia Talaver* (1869), 13 M. I. A. 141, at p. 158; 3 B. L. R. P. C. 1, at p. 4; 12 W. R. P. C. 41, at pp. 42, 43. See S. C. in Court below; *Pandaiya Talaver v. Puli Talaver* (1863), 1 Mad. H. C. 478, at p. 483; *Upoma Kuchain v. Bholaram Dhubi* (1888), 15 Calc. 708; *Mahan-tawa v. Gangawa* (1909), 33 Bom. 693; 11 Bom. L. R. 822. See *Ramamuni Ammal v. Kulanthai Natchear* (1871), 14 M. I. A. 346; 1 W. R. C. R. 1; Bhattacharya's "Hindu Law," 2nd ed., p. 85; Sarkar's "Hindu Law," 3rd ed., p. 103. A contrary view was expressed in *Melaram Nudial v. Thanooram Bamun* (1868), 9 W. R. C. R. 552, and by Mitter, J., in *Narain Dhara v. Rakhal Gain* (1875), 1 Calc. 1, at p. 4; 23 W. R. C. R. 334, at p. 335. It is said that in Bengal the practice is in accordance with Mitter, J.'s, view in the above case (Banerjee's "Law of Marriage," 2nd ed., p. 72). As to Bombay, see Steele, pp. 29, 80. As to intermarriage

In the case of the marriage of an illegitimate person, who, strictly speaking, belongs to no caste, he or she must be treated as belonging to the caste the members of which have recognized him or her as a caste fellow.¹ Marriage of illegitimate persons.

A marriage between a Hindu and a Christian woman who had become a Hindu has been upheld.²

The question as to the effect of a marriage between a Hindu and a non-Hindu is not an easy one. Such a marriage when celebrated in England is effectual according to English law,³ but in India the position is different. In such a question the Indian Courts would have to administer Hindu law.⁴ Mixed marriages. The Hindu law did not contemplate any such marriages, and would not recognize them. If the marriage were attempted to be performed according to Hindu rites and ceremonies, it would apparently have no effect, but if it were performed according to other rites the Court would apparently give effect to it. The inclination would be to support marriages, to which there could be no moral objection, to prevent children being rendered illegitimate, and to repudiate objections which however suited to ancient society have no application to modern times, when many people of divers communities and religions are to be found in India. Legislation on this subject is much needed.

Marriages between members of different castes may be recognized by Custom. local custom.⁵

2. A member of one of the twice-born classes cannot marry the daughter of an agnate, i.e. of a person belonging to the same *gotra*,⁶ or primitive stock, as himself.⁷ Exogamy.

This prevents a marriage between persons who are connected with a common ancestor entirely through males.

In this connection the expression *gotra* "means a family descended

between different sects of Lingayets, see *Fakirgouda v. Gangi* (1896), 22 Bom. 277. As to a family custom allowing intermarriage between sub-castes, see *Nugendar Narain (Rajah) v. Rughoonath Narain Dey*, W. R. 1864, C. R. 20, at p. 23.

¹ *In the matter of Ramkumari* (1891), 18 Calc. 264. As to the daughter of a bastard, see *Inderun Valungypooly Taver v. Ramasawmy Pandia Talaver* (1889), 13 M. I. A. 141; 3 B. L. R. P. C. 1; 12 W. R. P. C. 41; S. C. in Court below; *Pandaiya Telaver v. Puli Telaver* (1863), 1 Mad. H. C. 478.

² *Muthusami Mudaliar v. Masilamani* (1909), 33 Mad. 342.

³ *Chetti v. Chetti*, [1909] P. D. 67.

⁴ *Ante*, pp. 2-4.

⁵ See *Ram Lal Shookool v. Akhey*

Charan Mitter (1903), 7 C. W. N. 619. As to this case, see 7 C. W. N. pp. cccxxvii. and cccxxviii.

⁶ Lit. cow-pen, i.e. a place in which cows were kept or protected from plundering attacks. Bhattacharya's "Law of the Joint Family," p. 113. For a discussion as to the origin of the term, see Max Muller's "Chips from a German Workshop," vol. ii. p. 28; Banerjee's "Law of Marriage," 2nd ed., pp. 54, 55; Sarkar's "Hindu Law," 3rd ed., p. 76.

⁷ "Manu," chap. iii. para. 5; Steele, p. 160; Colebrooke's "Digest," vol. iii. p. 329; Banerjee's "Law of Marriage," 2nd ed., pp. 54, 55; Bhattacharya's "Hindu Law," 2nd ed., p. 88; Sircar's "Vyavastha Darapana," 2nd ed., p. 657.

from one of the several patriarchs, who are, according to some, twenty-four, and according to others, forty-two in number."

There seems to be no certainty as to what are the gotras at the present day. Apparently there are eight primitive gotras descended from the seven Rishis, Viswamitra, Jamadagni, Bharadwaja, Gotama, Attri, Vasishta, Kasyapa, together with Agastya. The remaining gotras are possibly subdivisions of these eight, but are not all identifiable with them.¹

"The theory of the gotra, as latterly described by Brahmanic writers, denies that either a Kshatriya, or a Vaisya, or a Sudra has a right to say that he belongs to a special gotra in the proper sense of the term."² Kshatriyas and Vaisyas have adopted the gotras of the spiritual guides or family priests of their remote progenitors.³ It is also said that a man is prohibited from marrying a girl belonging to a gotra having the same pravaras or principal sages as his own."⁴

Prohibited
degrees of
relationship.
Descendants
of father and
paternal
ancestors.

8. A Hindu may not marry⁵—

- (a) A female descendant as far as the seventh degree from his father or from one of his father's six ancestors in the male line.⁶

Sastri G. C. Sircar, in his "Law of Adoption,"⁷ says, "In fact the prohibited degrees for marriage are considered by the Sanskrit writers to constitute *sapindas* for the purpose of marriage, and they are different according to different sages. For instance, Vasishta declares that a man may marry a girl who is *fifth* and *seventh* on the mother's and father's sides respectively, whilst Paithinasi says that a damsel may be espoused who is beyond the *third* on the mother's and *fifth* on the father's side." But seven degrees on both sides appears to be prohibited by Manu, for he declares that a man must not marry a girl who is sapinda to his mother,⁸ and lays down generally in another place that sapinda relationship ceases with the seventh ancestor."¹⁰

¹ See Bhattacharya's "Law of the Joint Family," pp. 111-113; Iswar Chandra Vidyasagar's "Widow Marriage," p. 193.

² Bhattacharya's "Law of the Joint Family," p. 111.

³ *Ibid.*; Banerjee's "Law of Marriage," 2nd ed., p. 55; "Dattaka Mimamsa," chap. ii. para. 76.

⁴ Banerjee's "Law of Marriage," 2nd ed., p. 54, note 2; Colebrooke's "Digest," vol. iii. p. 329; Bhattacharya's "Hindu Law," 2nd ed., p. 88. See *Ramchandra v. Gopal* (1908), 32 Bom. 619, at p. 626; 10 Bom. L. R. 948.

⁵ See *Minakshi v. Ramanadha* (1887), 11 Mad. 49, at p. 53. These rules are taken from Banerjee's "Law

of Marriage," 2nd ed., pp. 64-66. In Bhattacharya's "Hindu Law," 2nd ed., p. 93, diagrams illustrating these rules will be found.

⁶ "Udvahatattwa," Raghunandana's Institutes, vol. ii. p. 65, referred to in Banerjee's "Law of Marriage," 2nd ed., pp. 59, 60. See *Vyas Chimankal v. Vyas Ramchandra* (1899), 24 Bom. 473; 4 Bom. L. R. 163. As to marriage with a half-sister's daughter, see *Karunabddhi Ganesa Ratnamaiyar v. Gopala Ratnamaiyar* (1890), 7 I. A. 173, at p. 177; 2 Mad. 270, at p. 279.

⁷ P. 386.

⁸ "Mitakshara," chap. i. para. 53.

⁹ Chap. iii. para. 5.

¹⁰ Chap. v. para. 60.

- (b) A female descendant as far as the seventh degree from his father's *bandhus*¹ or from one of their six ancestors, through whom such female is related to him.²

Descendants from father's *bandhus*, and their ancestors.

These six ancestors would be the *bandhu's* mother, mother's father, mother's father's father, mother's father's father's father, mother's father's father's father's father, and mother's father's father's father's father's father. It does not include mother's mother, &c., as "a line of female ancestors is not regarded as a line in the Hindu law."³

- (c) A female descendant as far as the fifth degree from his maternal grandfather or from one of his maternal grandfather's four ancestors in the male line.⁴

Descendants of maternal grandfather, and of his ancestors.

In the Presidency of Madras marriage with the daughter of a maternal uncle or of a paternal aunt is recognized by custom.⁵

According to some authorities a man cannot marry the daughter of an agnate of his maternal grandfather.⁶

- (d) A female descendant as far as the fifth⁷ degree from his mother's *bandhus*,⁸ or from one of their four ancestors through whom such female is related to him.⁹

Descendants from mother *bandhus* and their ancestors.

Where the *bandhu* in question is the son of the mother's maternal or paternal aunt, these four ancestors would be the *bandhu's* mother, mother's father, mother's father's father, and mother's father's father's father, and where the *bandhu* is the son of the mother's maternal uncle the four ancestors would be the father, father's father, father's father's father, and father's father's father's father.¹⁰

In spite of the above rules, a man may marry a girl who is

Exceptions.

¹ A *bandhu* is a *sapinda*, related through a female.

² "Udvahatattwa," Raghunandana's Institutes, vol. ii. p. 65, referred to in Banerjee's "Law of Marriage," 2nd ed., pp. 59, 60.

³ Banerjee's "Law of Marriage," 2nd ed., p. 60.

⁴ "Udvahatattwa," Raghunandana's Institutes, vol. ii. p. 65, referred to in G. D. Banerjee's "Law of Marriage," 2nd ed., p. 60.

⁵ See note by Mr. Anand Charlu, "Calcutta Weekly Notes," vol. vii. pp. lxxxii, xc., xcvi.

⁶ "Manu," chap. iii. para. 5. There seems to be a difference of opinion

with regard to this note; see Bhatlacharya's "Hindu Law," 2nd ed., pp. 91, 92; Sircar's "Vyavastha Darpana," 2nd ed., p. 658.

⁷ See ante, p. 36.

⁸ See above, note 1. This includes the sons of his mother's maternal aunt, the sons of his mother's paternal aunt, and the sons of his mother's maternal uncle.

⁹ "Udvahatattwa," Raghunandana's Institutes, vol. ii. p. 65, referred to in Banerjee's "Law of Marriage," 2nd ed., p. 60.

¹⁰ Banerjee's "Law of Marriage," 2nd ed., p. 61.

removed by three *gotras*¹ from him, although she be related within the above degrees.²

"The three *gotras* in the case of the descendants of a *bandhu* are always to be counted from his (the *bandhus*) own *gotra*. So also in the case of the descendants of the ancestors of a *bandhu*, who is the father's or the mother's maternal uncle's son, they are to be counted from the *bandhu's* own *gotra*. But in the case of the descendants of the ancestors of each of the other *bandhus*, the *gotras* are to be counted from his (the *bandhu's*) maternal grandfather's *gotra*."³

Sir G. D. Banerjee⁴ gives the following illustration of this rule:

"Suppose the paternal great-grandfather of the bridegroom to be of the *Sandilya gotra*; his daughter (by transfer of marriage) to be of the *Kasyapa gotra*; her daughter of the *Vatsya gotra*; and the daughter's daughter to be of the *Bharadwaja gotra*; the maiden daughter of this last, being of the *Bharadwaja gotra*, and being beyond three *gotras*, viz., the *Sandilya*, *Kasyapa*, and *Vatsya*, is eligible for marriage though within the prohibited degrees."

In practice these rules are, apparently, among all classes, not taken to exclude a *sapinda* girl beyond the fifth degree on the father's side, and the third degree on the mother's side,⁵ but in strictness this relaxation of the rule is said to be limited to the Kshatriyas in all the forms of marriage, and to the other classes only in the *Asura*,⁶ or other inferior forms of marriage.⁷

Origin of
rules.

The above rules are enunciated by Sir G. D. Banerjee in his "Law of Marriage and Stridhan." They are based upon the interpretation put by Raghunandana upon the text of Manu. As so interpreted, the text prohibits a man from marrying a girl who is a *sapinda*⁸ of his father or of his maternal grandfather.⁹ This *sapinda* relationship ceases after the fifth or seventh degree from the mother and father respectively.¹⁰ Yajna-

Difference be-
tween schools.

valkya¹¹ also requires that a man should not marry his *sapinda*. This rule is common to all schools, but there is a diversity between the view

¹ I.e. three females have intervened in the line between the man and the girl in question.

² Raghunandana's "Institutes," vol. ii. p. 64, referred to in G. D. Banerjee's "Law of Marriage," 2nd ed., p. 61.

³ G. D. Banerjee's "Law of Marriage," 2nd ed., pp. 61, 62.

⁴ *Ibid.*, p. 62.

⁵ Bhattacharya's "Hindu Law," 2nd ed., 91, see *ante*, p. 36.

⁶ *Post*, pp. 50, 51.

⁷ G. D. Banerjee's "Law of Marriage," 2nd ed., p. 62; Sircar's "Vyavastha Darpana," 2nd ed., pp. 663, 664.

⁸ "Manu," chap. iii. para. 5.

⁹ See Bhattacharya's "Hindu Law," 2nd ed. 88.

¹⁰ Yama, cited in the "Udvahatat-twa," p. 7, referred to in Bhattacharya's "Hindu Law," 2nd ed., 88.

¹¹ I., 52.

entertained by the Mitakshara school¹ and that entertained by the Bengal school² as to the meaning of *sapinda* relationship.

According to the Mitakshara³ school a man cannot marry a girl if, Mitakshara their common ancestor being traced through his or her father, such common school. ancestor is not beyond the seventh⁴ in the line of ascent from him or her, or, their common ancestor being traced through their mothers, such common ancestor is not beyond the fifth in the line of ascent from him or her.

Dr. J. N. Bhattacharya says,⁵ "I must note also the fact that those who are governed by the Mitakshara school practically exclude, for purposes of marriage, only the four lines⁶ that are considered ineligible by the Bengal school."

As to local and family customs permitting intermarriage within the Custom. prohibited degrees, see Mayne's "Hindu Law," 7th ed., pp. 104-106; Banerjee's "Law of Marriage," 2nd ed., pp. 235-241, Bhattacharya's "Hindu Law," 2nd ed., 98, 99.

A man cannot marry his stepmother's brother's daughter, Stepmother's relations. or daughter's daughter.⁷

The prohibition is based on a text of Sumantu,⁸ which specifies these persons. According to a reading of the text, the Western schools exclude also the stepmother's sisters and their daughters, and some persons hold that *sapinda* relationship in the case of the stepmother is the same as in the case of the natural mother up to the fifth degree.⁹

Sastri G. C. Sircar treats this rule of exclusion of certain of the

¹ According to the "Mitakshara" all the descendants of a common ancestor are *sapindas*, except that after the fifth ancestor on the mother's side, and after the seventh on the father's side, the relationship ceases. Bhattacharya's "Hindu Law," 2nd ed., 89.

² According to the Bengal school the expression means connected by the offering of the funeral cake, but "For purposes relating to marriage, Raghunandana," who is the chief authority in that school on the subject of marriage, "has not given any importance to the definition of the term '*Sapinda*.' He has relied upon express texts to exclude girls within the seventh degree on the father's side, and the fifth degree on that of the mother." There are, however, passages in the '*Udvahatattwa*,' in which the term '*Sapinda*' is taken to include in its denotation all agnates and cognates within the aforesaid limits." Bhattacharya's "Hindu

Law," p. 91.

³ See Bhattacharya's "Hindu Law," 2nd ed., p. 90.

⁴ In this computation both the common ancestor and the person in question must be taken into consideration.

⁵ "Hindu Law," 2nd ed., p. 91.

⁶ The first of these lines include girls belonging to the same *gotra* (*ante*, pp. 35, 36). The second includes girls belonging to the *gotra* of the maternal grandfather of the bridegroom (*ante*, p. 37). The two other lines are comprised in the above rules.

⁷ "Udvahatattwa," Raghunandana's Institutes, vol. ii. p. 66, referred to in G. D. Banerjee's "Law of Marriage," 2nd ed., p. 60.

⁸ Bhattacharya's "Hindu Law," 2nd ed., 95. Sumantu was the author of one of the Smritis.

⁹ Bhattacharya's "Hindu Law," 2nd ed., 95.

stepmother's relations as being one of merely moral obligation, and as having no legal force.¹

Other rules of restriction.

There are other rules of restriction on intermarriage, which are now considered to be of mere moral obligation, and which are not universally observed.

The paternal uncle's wife's sister, and her daughter, and the wife's sister's daughter were excluded.² In all of these cases the marriage is valid in law.

In former times a man could not marry the daughter of his spiritual guide or pupil,⁴ or a girl bearing his mother's name,⁵ or a girl older than him in age.⁶

Affinity.

Relationship by marriage does not *per se* operate as an impediment to a marriage. Thus a man can marry any relation of his wife whom he could have validly married if he was then marrying for the first time.⁷

Adopted son.

A son adopted according to the Dattaka form⁸ cannot marry any one of the persons whom he would have been prohibited from marrying if he had remained in his natural family.⁹ It is unsettled¹⁰ whether he is also prohibited from marrying any one of the girls, whom he could not have married, had he been a legitimate son of his adoptive father,¹¹ or whether he is

¹ "Hindu Law," p. 56.

² Bhattacharya's "Hindu Law," 2nd ed., 95.

³ See Banerjee's "Law of Marriage," 2nd ed., 64; Bhattacharya's "Hindu Law," 2nd ed., 95; Sarkar's "Hindu Law," 3rd ed., 92. As to wife's sister's daughter, see *post*, p. 39.

⁴ See Banerjee's "Law of Marriage," 2nd ed., pp. 66, 67; "Manu," chap. ii. para. 171; "Vyavastha Darpana," p. 665, note. Bhattacharya ("Hindu Law," 2nd ed., 96), treats this prohibition as still effectual, but a different view is adopted in Banerjee's "Law of Marriage," 2nd ed. 66, 67, and in Sircar's "Hindu Law," 56. The reason for the rule seems to have ceased, as Vedic instruction is now usually of merely nominal duration.

⁵ "Udvahatattwa," referred to in Banerjee's "Law of Marriage," 2nd ed., p. 67.

⁶ "Yajnavalkya," i. 52. In practice this rule is never departed from.

Banerjee's "Law of Marriage," 2nd ed., p. 67; Steele, 161.

⁷ See *Ragavendra Rau v. Jayaram Rau* (1897), 20 Mad. 283, where it was held that a marriage between a Hindu and the daughter of his wife's sister is valid. Banerjee's "Law of Marriage," 2nd ed., p. 64; G. C. Sircar's "Law of Adoption," p. 319.

⁸ *Post*, chap. iii.

⁹ *Narasammal v. Balaramachariu* (1893), 1 Mad. H. C. 420, at p. 426. Banerjee's "Law of Marriage," 2nd ed., p. 63; G. C. Sircar's "Law of Adoption," 387; Bhattacharya's "Hindu Law," 2nd ed., pp. 95, 96; "Dattaka Chandrika," s. 4, paras. 7-9; "Dattaka Mimansa," s. 6, para. 39; "Vyavahara Mayukha," chap. iv. s. 5, para. 30.

¹⁰ Bhattacharya's "Hindu Law," 2nd ed., pp. 95, 96.

¹¹ This view is taken in Banerjee's "Law of Marriage," 2nd ed., 63, following the "Dattaka Chandrika," s. 4, paras. 7-9.

only prohibited from marrying a girl who belongs to the *gotra* of his adoptive father, or is within three degrees of descent from the adoptive father and his two paternal ancestors.¹

The latter view has been accepted by Nanda Pandita in the "Dattaka Mimamsa,"² and it is therefore to be supposed that it would be acceptable to the Benares and Mithila schools.¹

Where an adoption has been made by a widow, or by a wife in conjunction with her husband, an adopted son is prohibited from marrying a girl whom he could not have married had he been a legitimate son of his adoptive mother.⁴

Whether he is prohibited from marrying in the family of a wife of his adoptive father, who has not joined in the adoption, seems unsettled.⁵

As the Hindu law did not recognize the remarriage of widows, there are necessarily no rules providing for the case. Remarriage of widows.

It would seem that a widow cannot marry a person whose relationship to her is such that she could not have married him if she had never been married. It is said⁶ that in order to ascertain what relatives of her first husband are forbidden to her in marriage reference should be made to the rules as to penance and appointment (*niyoga*), and to some special texts which pronounce certain relations as equal to mothers.

The rules in "Manu" as to penance would exclude a man from marrying the widow of his father,⁷ of his son,⁸ and of his *guru*.⁹

The application of the ancient rules of *niyoga* would apparently prevent a man from marrying the widow of his paternal or maternal grandfather, his father's widow, his father's or mother's sister, the widow of his paternal or maternal uncle, his father-in-law's widow, his sister or his daughter, his son's widow or daughter, or the widow of his *guru*.¹⁰

Vrihaspati¹¹ pronounces as equal to mothers, the mother's sister, the paternal and maternal uncle's wife, the father's sister, the mother-in-law, and the wife of an elder brother.

¹ This view is taken in G. C. Sircar's "Law of Adoption," 387, following the "Dattaka Mimamsa," s. 4, paras. 32-38.

² S. vi. paras. 32-38; see "Vyavahara Mayukha," chap. iv. s. 5, para. 30.

³ *Ante*, pp. 14, 17.

⁴ See Banerjee's "Law of Marriage," 2nd ed., p. 63.

⁵ *Ibid.*; S. C. Sircar's "Vyavastha Darpana," 2nd ed., p. 890; "Dattaka Mimamsa," s. 6, paras. 50-53.

⁶ See Bhattacharya's "Hindu Law,"

2nd ed., 97. In *Lachman Kuar v. Mardan Singh* (1886), 8 All. 143, the Court held that, in the absence of a special custom, the marriage of a Hindu with his cousin's widow was valid.

⁷ "Manu," chap. xi. paras. 55, 104-107.

⁸ *Ibid.*, chap. xi. para. 59.

⁹ *Ibid.*, chap. xi. paras. 49, 252.

¹⁰ See G. C. Sircar's "Law of Adoption," pp. 321, 322.

¹¹ Cited in "Dayabhaga," chap. iv. s. 3, para. 31.

Jats.

Among the Jats of the Province of Agra, marriage between a widow and her husband's brother is allowed.¹

Void marriage.

A marriage made within the prohibited degrees is void.²

The woman is entitled to receive maintenance from the man.³

The Hindu law did not permit a woman whose marriage was void on account of identity of gotra, or as being within the prohibited degrees, to marry again, even if the marriage was not consummated.⁴ Where the marriage was void on account of difference of caste, the Hindu law, according to some authorities, allowed the woman to remarry if the error was discovered before the ceremony of *garbhadana*,⁵ but not otherwise.⁶ The case is unlikely to occur, but if it did, the Courts might decline to consider that a void marriage is any impediment to a subsequent marriage.⁷

WHO MAY GIVE IN MARRIAGE.

Consent of guardian.

The gift of a female minor in marriage must be by, or with the consent of her father or other guardian in marriage. The consent of the guardian is also necessary in the case of the marriage of a male minor.⁸

Where there is a gift by or with the consent of a legal guardian, and the marriage rite is duly solemnized, and where the marriage of a male minor takes place with the consent of such guardian, the marriage is irrevocable.⁹

For the purposes of marriage the age of majority, according to the

¹ *Poorunmul v. Toolsee Ram* (1868), 3 Agra. 350.

² Kullaka Bhatta's commentary on "Manu," chap. iii. paras. 5, 11; Bhattacharya's "Hindu Law" 2nd ed., p. 97; Banerjee's "Law of Marriage," 2nd ed., p. 63.

³ Texts cited in Bhattacharya's "Hindu Law," 2nd ed., p. 97; Colebrooke's "Digest," vol. iii. p. 329; *Ramchandra v. Gopal* (1908), 32 Bom. 619; 10 Bom. L. R. 948.

⁴ See Banerjee's "Law of Marriage," 2nd ed., p. 191; Bhattacharya's "Hindu Law," 2nd ed., 98; Colebrooke's "Digest," vol. ii. p. 477; *Ramchandra v. Gopal* (1908), 32 Bom. 619, at p. 628; 10 Bom. L. R. 948.

⁵ A ceremony performed on the first appearance of the menses, and properly called the second marriage.

⁶ Banerjee's "Law of Marriage," 2nd ed., 191; Steele, 29, 30, 166.

⁷ See Banerjee's "Law of Marriage," 2nd ed., 191. *Aunjona Dasi v. Prahlad Chandra Ghose* (1870), 6 B. L. R. 243, at pp. 253, 254; 14 W. R. C. R. 403, at p. 405. If this view be not accepted, then, on the death of the husband, the woman could take advantage of the Hindu Widow's Remarriage Act (XV. of 1856, ante, p. 33).

⁸ *Nundlal Bhargwandas v. Tapeedas* (1809), 1 Borr. 14; 1 Morl. 287; Steele, p. 26.

⁹ *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 316, at p. 320. See *Kateeram Dokanee v. Gendhenee* (*Mussamut*) (1875), 23 W. R. C. R. 178.

Bengal school, is the end of the fifteenth year,¹ and according to the schools of law based on the Mitakshara, the end of the sixteenth year.² The age of majority for the purpose of marriage is not affected by the Indian Majority Act.³

The right, and duty, of giving a boy⁴ or a girl in marriage devolves upon the following persons in succession⁵ :—

Devolution of guardianship in marriage.

1. The father.⁶

2. The paternal grandfather.

3. The brother.⁷

4. Other paternal relations up to the tenth degree of affinity⁸ in order of proximity.

According to the Mitakshara school, the right then devolves upon the mother, and, failing her, upon the maternal grandfather, maternal uncle, and other maternal relations in order of proximity. According to the Bengal school, the right of the mother is postponed to that of the maternal grandfather and maternal uncle.⁹

Right of mother.

¹ *Lachman Das v. Rupchand* (1831), 5 Ben. Sel. Rep., 115, 2nd ed., 136; *Cally Churn Mullick v. Bhuggobut, y Churn Mullick* (1872), 10 B. L. R. 231; 19 W. R. C. R. 110; *Monsoor Ali v. Ramdyal* (1865), 3 W. R. C. R. 50; *Deobomoyee Dossee v. Juggessur Hati* (1864), 1 W. R. C. R. 75; *Luckheenarain Mujmodar v. Mud-dhosodun*, Ben. S. D. A., 1853, p. 505; *Sheebunker Dass v. Uluck Chander Aych*, Ben. S. D. A., 1859, p. 885.

² Strange's "Hindu Law," vol. i. p. 72; vol. ii. pp. 76, 77, 80; Mac-naghten's "Hindu Law," vol. i. chap. vii. (ed. 1829), p. 103.

³ Act IX. of 1875, s. 2.

⁴ See Macnaghten's "Hindu Law," vol. ii. p. 204.

⁵ Strange's "Hindu Law," vol. i. p. 36; vol. ii. p. 28; Macnaghten's "Hindu Law," vol. ii. p. 204; "Vyavastha Darpana," 2nd ed., p. 651; West and Bühler, 3rd ed., pp. 272, 673. See *Ram Bunsee Koonwaree (Maharane)* v. *Soobh Koonwaree (Maharane)* (1867), 7 W. R. C. R. 321, at p. 323; 2 Ind. Jur. N. S. 193; *Shridhar v. Hiratal Vitthal* (1887), 12 Bom. 480, at p. 484. It has been held in Madras *(Acha Ranganakammal v. Acha Ramanuja Aiyar-*

gar (1911), 21 Mad. L. J. 600) that this refers only to the ceremonial act of giving and not to the right of disposing the child in marriage.

⁶ *Nanabhai Ganpatrav Dhairyaan v. Janardhan Vasudev* (1886), 12 Bom. 110, at p. 118; *Golamee Gopee Ghose v. Juggessur Ghose* (1865), 3 W. R. C. R. 193; *Ex p. Jankypersaud Agurwallah* (1859), 2 Boul. 28, 114; *Nundlal Bhugwandass v. Tapeedass* (1809), 1 Borr. 14; 1 Morl. 287.

⁷ *Ex p. Jankypersaud Agurwallah* (1859), 2 Boul. 28, 114. Strange's "Hindu Law," vol. ii. p. 30; Macnaghten's "Hindu Law," vol. ii. p. 204.

⁸ As to the right of the paternal uncle, see *Brindaban Chandra Kurmoker v. Chundra Kurmoker* (1885), 12 Calc. 140, at p. 142; *Shridhar v. Hiratal Vitthal* (1887), 12 Bom. 480, at p. 484.

⁹ Banerjee's "Law of Marriage," 2nd ed., pp. 43, 44; Bhattacharya's "Hindu Law," 2nd ed., p. 116; "Vyavastha Darpana," 2nd ed., p. 651; Strange's "Hindu Law," vol. ii. p. 28; Macnaghten's "Hindu Law," vol. ii. p. 28. See "Narada Smriti," chap. xii. paras. 20, 21.

Where a relative, other than the father, seeks to exercise a right to give in marriage, it is his duty to consult the mother, and if her objection be not unreasonable, to allow it.¹

Stepmother. A stepmother has no right to give in marriage.²

Consent of ward. A minor cannot be married or given in marriage against his or her will.

Although it would rarely happen that a Hindu girl would be consulted as to the choice of a bridegroom, and although the form of a Hindu marriage contemplates a gift of the girl by her father or other guardian rather than a contract between the parties to the marriage, a bridegroom cannot be forced upon an unwilling bride.¹ The gift is made merely in discharge of the duty of the guardian, and not in exercise of any right of property in the girl.⁴

Delegation of right. A father can,⁵ expressly or by implication,⁶ delegate his authority to another person.

It is submitted that no other guardian can delegate his right, except, perhaps, to a person on whom the right might eventually devolve, as in the case of *Ram Bunsee Koonwaree (Maharane)* v. *Soobh Koonwaree (Maharane)*,⁷ where the nearest male kinsman assented to the paternal grandmother giving the girl in marriage.

Loss of right. A father or other guardian loses his right to give in marriage when he has neglected to exercise the right for a long time, or has in other ways waived the right.⁸

The conviction of the father does not necessarily destroy his right to give his daughter in marriage.⁹

Remedy of guardian. A father or other guardian in marriage can enforce his right by suing for an injunction to prevent the marriage of

¹ See *S. Namasevayam Pillay v. Annammai Ummal* (1869), 4 Mad. H. C. 339.

² *Ram Bunsee Koonwaree (Maharane)* v. *Soobh Koonwaree (Maharane)* (1867), 7 W. R. C. R. 321; 2 Ind. Jur. 193.

³ See *Shridhar v. Hiralal Vishal* (1887), 12 Bom. 480 at p. 4861. Colebrooke's "Digest," vol. ii. p. 481.

⁴ See *Khushalchand Lalchand v. Bai Mani* (1886), 11 Bom. 247, at p. 255.

⁵ *Golamee Gopee Ghose v. Juggessur Ghose* (1865), 3 W. R. C. R. 193.

⁶ *Golamee Gopee Ghose v. Juggessur Ghose* (1865), 3 W. R. C. R. 193.

⁷ (1867), 7 W. R. C. R. 321; 2

Ind. Jur. 193.

⁸ See *Khushalchand Lalchand v. Bai Mani* (1886), 11 Bom. 247; *King v. Kistnama Nasck* (1814), 2 Str. N. C. 89; 1 Norton L. C. 1; *Modhoo-soodun Mookerjee v. Jadub Chunder Banerjee* (1865), 3 W. R. C. R. 194; *Ghaza v. Sukru* (1897), 19 All. 515; *Rulyat (Bae)* v. *Jeychund Kewul* (1843), Bellasus, 43; 1 Morl. (N. S.) 181. The fact that the father had given up worldly affairs, and had become a recluse would be evidence that he had waived his rights of guardianship.

⁹ See *Nanabhai Ganpatrav Dhavryavan v. Jnardham Vasudev* (1886), 12 Bom. 110.

his ward to a person of whom he does not approve,¹ and the Court will in a suitable case grant an injunction *pendente lite* to restrain such marriage.²

The order of the Court may be subject to restrictions upon the exercise of the rights of the guardian.¹

The Court will restrain a guardian from an improper exercise of his authority; but the Court will not, except in a case of gross misconduct, interfere with the exercise of the discretion by a father.⁴

Control of guardian by Court.

Where a guardian of the person or property of a minor has been appointed by a High Court, or by a Civil Court acting under the powers contained in Act VIII. of 1890, the rights of such guardian are subject to the control of the Court appointing him,⁵ and such Court can, it is submitted, give all necessary directions with regard to the marriage of the ward,⁶ at any rate where the person appointed or declared guardian would under Hindu law be the person entitled to give the minor in marriage.

Guardian appointed by Court.

Where a minor is a ward of the Bengal Court of Wards, the leave of such Court must be obtained before the marriage.⁷

Ward of Bengal Court of Wards.

Whoever without the previous consent of the Courts of Wards abets the marriage of a minor ward of the Madras Court of Wards is liable on conviction before a Court of Session to a fine not exceeding Rs. 2000, or to imprisonment for a term not exceeding six months, or to both.⁸

Madras Court of Wards.

The Hindu law permits a girl to choose a husband for herself, if there be no available relation having a right to give her in marriage,⁹ or if her guardian in marriage has neglected to provide a husband for her for, at any rate, three years after she has attained a marriageable age.¹⁰

When minor girl may select husband for herself.

¹ See *In the matter of Kashi Chunder Sen* (1881), 8 Cal. 266, S. C. *Bromhomoyee v. Kashi Chunder Sen*, 10 C. L. R. 91; *Khushalchand Lalchand v. Mani (Bai)* (1886), 11 Bom. 247, at p. 253.

² *Nanabhui Ganpatrav Dhairyavan v. Janardhan Vasudev* (1886), 12 Bom. 110.

³ See *Shridhar v. Hiralal Vitthal* (1887), 12 Bom. 480.

⁴ See *Shridhar v. Hiralal Vitthal* (1887), 12 Bom. 480, at pp. 484, 485.

⁵ See Act VIII. of 1890, s. 43.

⁶ See Act VIII. of 1890, s. 43; Trevelyan's "Law of Minors" (3rd ed.), pp. 176, 177, 291. Doubtful in *Diwali (Bai) v. Moti Karson* (1896),

22 Bom. 509, at p. 513; see Wilson's "Anglo-Muhammadan Law," 3rd ed., p. 190.

⁷ Court of Wards Rules, s. viii. (e) rule 5. The only penalty, apparently, for a disobedience of this rule is that the Court might refuse to authorize payment of the expenses of the marriage out of the ward's funds.

⁸ Act I. (M. C.) of 1902, s. 67.

⁹ "Narada," chap. xii. paras. 20-22. "Yajnavalkya," i. 63.

¹⁰ Strange's "Hindu Law," i. 36. "Manu," chap. ix. paras. 90, 91. Colebrooke's "Digest," vol. ii. p. 387. According to "Gautama" (xviii. 20-23), she need only wait three months. The marriageable age

In the former case the Hindu law required the girl to obtain permission from the King before selecting a husband for herself.¹ Although the Law Courts now exercise the functions relating to minors, which were formerly exercised by the Sovereign in person, no such application to the Court seems to be contemplated by modern practice.

The case would not be likely to occur, but effect would apparently be given to a marriage entered into by a girl who has no relations entitled to give her in marriage, provided the marriage be in other respects unexceptionable.

In the case of the guardian neglecting to give the girl in marriage, the right of the guardian next in order would apparently accrue,² rather than that the girl should be able to select a husband for herself.³

It is said that, if a girl chooses a husband for herself, she cannot take with her any ornaments which have been given to her by her father, mother, or brothers.⁴

Effect of
absence of
consent of
guardian in
marriage.

A marriage, otherwise legally contracted, and performed with the necessary ceremonies, is not rendered invalid by the mere absence of the consent of the guardian in marriage.⁵

The circumstance that a marriage was contracted in disobedience of an order of a Civil Court would not render it invalid.⁶

Powers of
Court.

The Courts have power to declare that a marriage, which has been entered into without the consent of the guardian, is on that account invalid, and would probably do so, at any rate if the marriage has not been consummated, in a case where the interests of the child had been disregarded, and where a person having no pretence of authority had disposed of the child in marriage.⁷

is said to be the completion of the eighth year. Banerjee's "Law of Marriage," 2nd ed., p. 49. See "Manu," ix. 89.

¹ "Narada," xii. 22. "Yajnavalkya," i. 63.

² See *ante*, p. 43.

³ See Strange's "Hindu Law," i. 36.

⁴ "Manu," ix. 92, and other authorities referred to in Mayne's "Hindu Law," 7th ed., p. 109, note (f).

⁵ *Ghazi v. Sukru* (1897), 19 All. 515; *Mulchand Kuber v. Bhudhia* (1897), 22 Bom. 812; *Diwali (Bai)* v. *Moti Karson* (1896), 22 Bom. 509; *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 316; *Khushalchand*

Lalchand v. Mani (Bai) (1886), 11 Bom. 247; *Brindabun Chandra Kurmoker v. Chandra Kurmoker* (1885), 12 Calc. 140; *Modhoosoodun Mookerjee v. Jadub Chunder Banerjee* (1865), 3 W. R. C. R. 194; *Rulyat (Baee) v. Jeychund Kewul* (1843), Bellasis 43; 1 Morl. Dig. N. S. 181.

⁶ *Diwali (Bai) v. Moti Karson* (1896), 22 Bom. 509.

⁷ See *Aunjona Dasi v. Prahlad Chandra Ghose* (1870), 6 B. L. R. 243; 14 W. R. C. R. 403; Banerjee's "Law of Marriage," 2nd ed., 50, 51. See, however, *Mulchand Kuber v. Bhudhia* (1897), 22 Bom. 812; *Khushalchand Lalchand v. Mani (Bai)* (1886), 11 Bom. 247.

Where the marriage has been induced by force or fraud,¹ it would on that account be declared to be invalid, apart from any question as to the want of consent by the guardian.²

There would be great difficulties in setting aside a marriage which had been consummated, and in any case it would be difficult to obtain a bridegroom for a Hindu girl who had already gone through the form of marriage with another person.

A minor³ widow whose marriage has not been consummated cannot remarry without the consent of her father, or, if she has no father, of her paternal grandfather; or if she has no such grandfather, of her mother; or, failing all these, of her elder brother; or failing also brother, of her next male relative. Marriages made without such consent may be declared void by a Court of Law, but the consent is to be presumed until the contrary is proved, and no such marriage can be declared void after it has been consummated.⁴

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent is sufficient consent to constitute her marriage valid.⁵

A father or other guardian cannot enforce an agreement to recompense him in consideration of the marriage of his child or ward, although the marriage be in the *asura*⁶ form.⁷

The Allahabad High Court holds that each case must be judged by its circumstances.⁸

¹ I.e. fraud on the person marrying, or being given in marriage. Mere fraud on the guardian, such as in *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 316, where the mother falsely stated that she had the father's permission would not of itself invalidate the marriage; see *Khushalchand Lalchand v. Mani (Bai)* (1886), 11 Bom. 247.

² *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 311, at p. 320; *Aunjana Dasi v. Prahlad Chandra Ghose* (1870), 6 B. L. R. 243, at p. 254; 14 W. R. C. R. 403, at p. 405; *Mulchand v. Bhudhia* (1897), 22 Bom. 812, at pp. 817, 818.

³ I.e. minor according to "Hindu Law," ante, pp. 42, 43.

⁴ Hindu Widow Remarriage Act (XV. of 1856), s. 7. This would not

interfere with the jurisdiction of the Court to set aside a marriage which had been brought about by force or fraud exercised upon the widow (see above).

⁵ Hindu Widow Remarriage Act (XV. of 1856), s. 7.

⁶ Post, p. 50.

⁷ *Gulabchand v. Fulbai* (1909), 33 Bom. 411; *Baldeo Das Agarwalla v. Mohamaya Persad* (1911), 15 C. W. N. 447; *Venkata Kristnayya (Kalavagunta) v. Lakshmi Narayana (Kalavagunta)* (1908), 32 Mad. 165; *Dholidas Ishvar v. Fulchand* (1897), 22 Bom. 658; *Dulari v. Vallabdas Praggi* (1888) 13 Bom. 126. See *Pitamber Ratansi v. Jagjivan Hansraj* (1884), 13 Bom. 131.

⁸ *Baldeo Sahai v. Jumna Kunwar* (1901), 23 All. 495, following *Visvanathan v. Saminathan* (1889), 13 Mad.

Consent to remarriage of minor widow.

Agreement to pay money to guardian.

The father or other guardian, can recover money which he has paid as the consideration for a marriage which has not taken place.¹

Payment to
bridegroom.

There is no objection to a payment of money by the guardian of a girl to the proposed bridegroom in consideration of the marriage.²

Marriage
brocade con-
tract.

A contract, whereby a person undertakes for reward to bring about a marriage, cannot be enforced.³

Marriage
expenses.

The property of a joint family governed by the Mitakshara school of law is liable for the reasonable⁴ expenses of the marriages of the daughters of male members of such family,⁵ including the daughters of those who are excluded from inheritance.

These expenses have been held to include a gift on the occasion of the *dviragaman* or *gowna* ceremony which takes place subsequent to the marriage.⁶ The Madras High Court has held that where a mother gave her daughter

83. See *Vaithyanatham v. Gangarazu* (1893), 17 Mad. 9; *Ram Chand Sen v. Audasto Sen* (1884), 10 Cal. 1054. *Lallun Monee Dossee (Ranee) v. Nobin Mohun Singh* (1875), 25 W. R. C. R. 32; *Jogeswar Chakrabatti v. Panch Kauri Chakrabatti* (1870), 5 B. L. R. 395; 14 W. R. C. R. 154; *Juggernath Persad v. Janky Persad* (1859), 2 Boul. 28. See Bhattacharya's "Hindu Law," 2nd ed., pp. 101, 102. "Manu" says (iii 51), "Let no father, who knows the law, receive a gratuity, however small, for giving his daughter in marriage, since the man who through avarice takes gratuity for that purpose is a seller of his offspring," but the practice is very common.

¹ *Ramchand Sen v. Audasto Sen* (1884), 10 Cal. 1054; *Jogeswar Chakrabatti v. Panch Kauri Chakrabatti* (1870), 5 B. L. R. 395, 14 W. R. C. R. 154; *Rambhat v. Timmayya* (1892), 16 Bom. 673; *Malji Thakersey v. Gomi* (1887), 11 Bom. 412; *Gulabchand v. Fulbai* (1909), 33 Bom. 411; 10 Bom. L. R. 649. See Indian Contract Act (IX. of 1872), s. 65.

² See Indian Contract Act (IX. of 1872), s. 65, illus. (a).

³ *Vaithyanathan v. Gangarazu* (1893), 17 Mad. 19; *Pitamber Ra-*

tansi v. Jagjivan Hansraj (1884), 13 Bom. 131. See *Dulari v. Vallabdas Praggi* (1888), 13 Bom. 126, at p. 130; *Jogeswar Chakrabatti v. Panch Kauri Chakrabatti* (1870), 5 B. L. R. 395, 14 W. R. C. R. 154.

⁴ In *Vaikuntam Ammangar v. Kallapiran Ayyangar* (1902), 26 Mad. 497, the Court only allowed the expenses of ceremonies which invariably formed part of the marriage ceremonies, and disallowed the expenses of ceremonies which were usually, though not invariably, performed. It is submitted that greater latitude would be allowed to a guardian. The "Mitakshara" (chap. 1., s. 7, paras. 5-14), and the "Vismatrodaya" (chap. 11., Part I. s. 21), provide for the dowry and marriage expenses of a daughter one-fourth of what she would have been entitled to receive, if she had been a son, see *Churaman Sahu v. Gopi Sahu* (1909), 13 C. W. N. 994, at p. 997; Sarkar's "Hindu Law," 3rd ed. 245.

⁵ See *Vaikuntam Ammangar v. Kallapiran Ayyangar* (1900), 23 Mad. 512. Indian Contract Act (IX. of 1872), s. 69.

⁶ *Churaman Sahu v. Gopi Sahu* (1909), 13 C. W. N. 994.

in marriage against the wish of her husband's father she was nevertheless entitled to be repaid the expenses out of the family property.¹

The expenses of the marriage of a male member of a family must also be paid out of the family property.²

In the case of a joint family governed by the Bengal school of law the marriage expenses of the daughters of the co-sharers, and of persons who are excluded from inheritance, and of other unmarried female members of the family, such as daughters of adult sons of co-sharers, would be payable out of the family property.³

A father is not, in the absence of a contract, under a legal liability to pay the marriage expenses of any of his children,⁴ ^{Liability of father.} but after his death the reasonable expenses of the marriages of his daughters are payable out of his estate.⁵

Such expenses create a charge upon the property to the same extent as rights of maintenance create a charge,⁶ and to such extent only.

There is also authority that the estate of a deceased Hindu is liable for the expenses of the marriage of a son who pre-deceased him.⁷ ^{Grandfather.}

Where a ward has separate property a guardian would be entitled to pay thereout the reasonable expenses of his ward's marriage.⁸ ^{Payment out of infant's property.}

FORMS OF MARRIAGE.

The only forms of marriage now recognized by the general Hindu law are the *Brahma* form and the *Asura* form. Both forms are now applicable to all classes. ^{Forms of marriage now recognized.}

¹ *Acha Ranganakammal v. Acha Ramanuja Aiyangar* (1911), 21 Mad. L. J. 600.

² *Sundrabai v. Shivanarayana* (1907), 32 Bom. 81; 9 Bom. L. R. 1366; *Bhagirathi v. Jokhu Ram Upadhia* (1910), 32 All. 575; *Kameswari Sastri v. Veerachariu* (1910), 34 Mad. 422, dissenting from *Govindarazulu Narasimhan v. Devarabhotla Venkatanarasayya* (1903), 27 Mad. 206. The expenses of a second marriage will in some cases be payable out of the property, *Bhagirathi v. Jokhu Ram Upadhia* (1910), 32 All. 575.

³ Sarkar's "Hindu Law," 3rd ed., 106, 107.

⁴ *Sundari Ammal v. Subramania Ayyar* (1902), 26 Mad. 505.

⁵ *Preaj Nuran v. Ajodhyapurshad* (1848), 7 Ben. Sel. R. 513, 2nd ed., 602; *Gunput Lall (Lalla) v. Toorun Koonwar (Musamut)* (1871), 16 W. R. C. R. 52. See *Ramcoomar Mitter v. Ichamoy Das* (1880), 6 Calc. 36, at p. 37; 6 C. L. R. 429, at 430.

⁶ See *post*, pp. 85-89.

⁷ *Ramcoomar Mitter v. Ichamoy Das* (1880), 6 Calc. 36; 6 C. L. R. 429.

⁸ *Juggessur Sircar v. Nilambur Biswas* (1865), 3 W. R. C. R. 217; *Makundi v. Sarabruk* (1884) 6 All. 417, at p. 421. See *ante*, p. 48; note 4.

Ancient forms of marriage. The ancient Hindu law allowed the following eight different forms of marriage.¹ The first four of these were considered approved forms.

1. The *Brahma*.²

Brahma. This form of marriage originally contemplated the gift of the girl by her father to a man learned in the *Vedas*,³ and was, therefore, peculiar to Brahmins.

It is the only one now left of the four approved forms of marriage, and is now suitable for all classes.⁴

2. The *Daiva*.⁵

Daiva. In this form, which was peculiar to Brahmins, the maiden was given in marriage to the officiating priest.⁶

3. The *Arsha*.⁷

Arsha. In this form the father gave his daughter in consideration of one or two pair of oxen.⁸ It was peculiar to Brahmins.

4. The *Prajapatya* or *Kaya*.⁹

Prajapatya. In this form the bridegroom was an applicant for the bride. It was peculiar to Brahmins.¹⁰

5. The *Asura*.¹¹

Asura. In this form the bridegroom purchased the bride from her father.¹² The only difference between this form and the *Arsha* form is that in this form property other than cattle is taken by the father of the bride.¹³ The mere giving of a present to the bride does not render the marriage an

¹ See "Manu," chap. iii. paras. 21-41. "Yajnavalkya," i. 58-61. "Narada," chap. xii. paras. 39-54. Colebrooke's "Digest," vol. iii. 604. "The different forms of marriage recognized by the Hindu law are probably to be traced historically to the customs of different tribes which afterwards coalesced to form a single community," per West, J., in *Vijayarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at p. 254.

² So called because peculiarly fit for Brahmins. Colebrooke's "Digest," vol. iii. p. 604.

³ "Manu," chap. iii. para. 27.

⁴ *Jaikisondas Gopaldas v. Harkisondas Hullochandas* (1876), 2 Bom. 9, at p. 14; *Sivarama Casia Pillay v. Bagavan Pillay*, Mad. S. D. for 1859, p. 44, cited in Norton's "Leading Cases," Part I. p. 5.

⁵ Lit. divine : so called as being a

ceremony proper for the Gods.

⁶ "Manu," iii. 28. Colebrooke's "Digest," vol. iii. p. 604.

⁷ Lit. scriptural, anything for which a *Rishi* is an authority; Wilson's "Glossary," p. 32.

⁸ "Manu," chap. iii. para. 29.

⁹ So called as being the ceremony of the *Kas* or *Prajapatis*, the lords of created beings or progenitors of mankind; "Manu," chap. i. para. 34; chap. iii. para. 30.

¹⁰ See Banerjee's "Law of Marriage," 2nd ed., p. 78.

¹¹ Lit. demoniacal; Wilson's "Glossary," p. 37. "It is called the *Asura* form, as being the ceremony of the *Asuras*, or the aboriginal non-Aryan tribes of India," Banerjee's "Law of Marriage" 2nd ed., p. 79.

¹² "Manu," chap. iii. para. 31.

¹³ Bhattacharya's "Hindu Law," 2nd ed., 104.

Asura marriage.¹ Although there may be *Brahma* ceremonies, where there is a "bride price," the marriage is an *Asura* marriage.²

This form of marriage was permissible to *Vaisyas* and *Sudras*, but not to the two highest classes.³ It is now applicable to all classes,⁴ and seems to be commonly practised throughout India.⁵ It is said to be, in fact, the most common form of marriage,⁶ at any rate among *Sudras* in Southern India,⁶ and members of the *Bhandari* and other inferior castes in Western India.⁷

6. The *Gandharba*.⁸

This form depended solely upon the mutual consent of the parties *Gandharba* marrying.⁹ It was confined to the *Kshatriyas* or military class,⁹ and seems to have been effected by mere consummation.¹⁰ Although this form of marriage is not recognized by the general Hindu law, a form of *custom* that name is permitted in some cases by family usage. In a case decided by the Bengal Sudder Court in 1817, a marriage by a member of the military class in this form was recognized,¹¹ and the same Court, in 1853,¹² upheld a similar marriage by a Rajah of Julpigoree, who belonged to an aboriginal tribe, which had to some extent adopted Hindu customs.¹³

This form of marriage is said to still exist in the family of the Tipperah Rajahs,¹⁴ and it was recently asserted to have taken place in a family in Ganjam.¹⁵ A religious ceremony is now as necessary in a marriage in

¹ *Jaiskiondas Gopaldas v. Harkiondas Hullochandas* (1876), 2 Bom. 9, at p. 15. "Manu," chap. iii. para. 54.

² *Chunilal v. Surajram* (1909), 33 Bom. 433; 11 Bom. L. R. 708.

³ *Jaiskiondas Gopaldas v. Harkiondas Hullochandas* (1876), 2 Bom. 9, at p. 14. Colebrooke's "Digest," vol. iii. p. 604. Steele, p. 31.

⁴ *Visvanathan v. Saminathan* (1889), 13 Mad. 83. See *Keshow Rao Diwakur v. Naro Junardhun Patunkur* (1821), 2 Borr. 194; *Nundlal Bhugwandas v. Tapeedas* (1810), 1 Borr. 14. As to Western India, see *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244.

⁵ Banerjee's "Law of Marriage," 2nd ed., p. 82. Strange's "Hindu Law," i. 43.

⁶ See Mayne's "Hindu Law," 7th ed., pp. 99 (note 2), 100.

⁷ *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244.

⁸ The name is taken from that of "a kind of inferior divinity attendant upon Indra and Kuvera, and distinguished for musical proficiency." Wilson's "Glossary," p. 164.

⁹ See "Manu," chap. iii. paras. 32, 41.

¹⁰ Sarkar's "Hindu Law," 3rd ed., p. 84.

¹¹ *Hujmu Chul v. Bhadoorun (Ranee)*, referred to in Ben. S. D. A. 1846, p. 340, and 7 Ben. Sel. R. 355 (new edition, pp. 355, 356).

¹² *Mokrund Deb Raekut v. Bissessuree (Ranee)*, Ben. S. D. A. 1853, p. 159.

¹³ See *Fanindra Deb Raikat v. Rajeswar Das* (1885), 12 I. A. 72; 11 Calo. 463.

¹⁴ See *Chuckrodhuj Thakoor v. Beer Chunder Joobraj* (1864), 1 W. R. C. R. 194.

¹⁵ *Brindavana v. Radhoman* (1888), 12 Mad. 72. A marriage in this form was also asserted in *Hari Krishna Devi Garu (Sri Gajapaty) v. Radhika Patta Maha Devi Garu (Sri Gajapaty)* (1865), 2 Mad. H. C. 369. S. C. on appeal, *Radhika Patta Maha Devi Garu (Sri Gajapaty) v. Nilamani Patta Maha Devi Garu (Sri Gajapaty)* (1870), 13 M. I. A. 497; 6 B. L. R. 202; 14 W. R. P. C. 33.

this form as when the marriage takes place in the ordinary forms.¹ The Gandharba form of marriage as now celebrated, and the ancient form seem, therefore, to resemble one another in name only.

7. The *Rakshasa*.²

Rakshasa.

This was a marriage by capture,³ and would in the present day be dealt with by the criminal law.⁴ It was peculiar to the Kshatriyas, or warrior class.⁵

8. The *Paisacha*.⁶

Paisacha.

In this form the Hindu law for the sake of the woman and her offspring treated as a marriage a seduction by fraud.

Customary
form of
marriage.

Where by immemorial and continuous custom⁷ a form of marriage, which is not repugnant to the fundamental principles of Hindu law, is invariably practised by a particular class of persons or family, a marriage in such form is valid.

In the case of a family or race which is not Hindu by origin, but which has gradually, or otherwise, more or less adopted Hindu customs or Hindu law, a custom at variance with Hindu law would be upheld,⁸ provided that it were not repugnant to general ideas of morality.

Forms of
marriage ac-
cording to
family usages.

The following forms of marriage peculiar to individual families have (amongst others) been recognized by the Courts:—

In the Raj family of Hill Tipperah, marriage takes place in the *Gandharba*⁹ or *Santigrihita*¹⁰ form, but the wife married in that form seems to be inferior to a wife married in accordance with the ordinary form.¹¹

¹ *Brindavana v. Radhumani* (1886), 12 Mad. 72; *Hari Krishna Devi Guru (Sri Gajapaty) v. Radhika Patta Maha Devi Guru (Sri Gajapaty)* (1885), 2 Mad. H. C. 369, at p. 374. See *Chuckrodhuj Thakoor v. Beer Chunder Joobraj* (1864), 1 W. R. C. R. 194; *Bhaoni v. Maharaj Singh* (1881), 3 All. 738.

² Lit. a fiend-like marriage. See Wilson's "Glossary," p. 436.

³ "The seizure of a maiden by force from her house while she weeps and calls for assistance, after her kinsmen and friends have been slain in battle or wounded, and their houses broken open, is the marriage styled *Rakshasa*." "Manu," chap. iii. para. 33.

⁴ Indian Penal Code (Act XLV. of 1860), s. 366.

⁵ *Jaisindras Gopaldas v. Harkishan*

Hullochandras (1876), 2 Bom. 9, at p. 14.

⁶ Lit. diabolical. Wilson's "Glossary," p. 389. "When the lover secretly embraces the damsel, either sleeping or flushed with strong liquor, or disordered in her intellect, that sinful marriage called *Paisacha* is the eighth and basest." "Manu," iii. para. 34.

⁷ See *Gatha Ram Mestree v. Moohita Kochin Atteah Domoonee* (1875), 14 B. L. R. 298; 13 W. R. C. R. 179; "Manu," iii. 35. As to the necessary conditions for the validity of a custom, see *ante*, pp. 24, 25.

⁸ See *Fanindra Deb Raikat v. Rajeswar Das* (1885), 12 I. A. 72; 11 Calc. 463.

⁹ See *ante*, p. 51.

¹⁰ Lit. one who receives holy water.

¹¹ See *Chuckrodhuj Thakoor v. Beer*

A Rajah of Orissa can marry a girl of a different caste in what is called the *phulbiha* form, which consists in putting a garland round the neck of the woman, or in an exchange of garlands.¹

The *Sagai* form,² by which widows of the *Namosudra* caste,³ and of the *Koiries* and other low castes in Behar,⁴ and of the *Hukwae* caste,⁵ remarry.

The *Kurao Dhureecha*, or the marriage of a widow with her deceased husband's brother, is common among Jats⁶ and the *Lodh* caste⁷ in the North-West.

The *Serat Udiki*⁸ form, by which wives, deserted by their husbands, can remarry according to the custom of the Lingaits of South Canara.⁹

As to the Sikh forms of marriage, see *Juggomohun Mullick (Doe dem) v. Saumcoomar Bebee* (1815), 2 Morl. Dig. 43; Anand Marriage Act (VII. of 1909).

As to forms of marriage which are recognized by local, tribal, or family custom, see Banerjee's "Law of Marriage," 2nd ed., Lecture VI.; Bhat-tacharya's "Hindu Law," 2nd ed., pp. 105, 111, 112; Risley's "Tribes and Castes of Bengal"; Crooke's "Tribes and Castes of the North-Western Provinces and Oudh"; Mayne's "Hindu Law," 7th ed., pp. 120-128.

As to the marriage of Hindus domiciled in the Madras Presidency following the Marumakkatayan or the Aliyasantana law of inheritance, see Madras Act IV. of 1896.

Among the Nairs of Malabar there is a form of marriage called "*San-bandham*." There are no ceremonies. It is dissoluble on the will of either party. The wife and children acquire no rights of maintenance or inheritance. It does not seem to have been recognized by the Courts,¹⁰ but it has been recognized by the Legislature in permitting registration of such marriages.¹¹

Chunder Joobraj (1864), 1 W. R. C. R. 194; *Nobodip Chundro Deb Burmun (Rajkumar) v. Bv Chundra Manikya Bahadoor (Rajah)* (1876), 25 W. R. C. R. 404, at pp. 410, 414.

¹ As to the customs of the Urya Rajahs and Chiefs, see the *Pachis Siwal*, or twenty-five questions put by the superintendent of the Tributary Mehals in 1814 to the leading Rajahs in those Mehals. These answers have been recognized by the Courts, e.g. see *Prandhur Roy v. Ramchender Mongraj*, Ben. S. D. A. 1861, p. 16; *Durrup Sing Deo v. Buzzurdhun Roy* (1863), 2 Hay. 335; *Rungadhur Nurendra Maradraj Mahapatra v. Juggurnath Bhromurbar Roy* (1877), 1 Shome's "Law Reporter," C. R. 92, at p. 95. The substance of the answers is given in Banerjee's "Law of Marriage," 2nd ed., pp. 231, 232.

² In this form the main ceremony

consists in putting a red or *Sindur* mark on the bride's forehead in the presence of assembled friends and relatives. *Bissuram Koiree v. Empress* (1878), 3 C. L. R. 410.

³ *Hurry Churn Dass v. Nimai Chand Keyal* (1883), 10 Calc. 138; 13 C. L. R. 207. See *Jukun v. Queen Empress* (1892), 19 Calc. 627.

⁴ *Bissuram Koiree v. Empress* (1878), 3 C. L. R. 40.

⁵ *Kally Churn Shaw v. Dukhee Bibee* (1879), 5 Calc. 692.

⁶ *Poorunmul v. Toolsee Ram* (1868), 3 Agra. 350; *Queen v. Bahadur Singh* (1872), 4 N. W. P. 128.

⁷ *Kasaree v. Samaradhan* (1873), 5 N. W. P. 94.

⁸ Giving a cloth.

⁹ *Virasangappa v. Rudrappa* (1885), 8 Mad. 440.

¹⁰ 15 C. W. N. colz.

¹¹ Malabar Marriage Act (IV. of 1895, M. C.), s. 3.

New sect.

Where "a new Hindu sect comes into existence, and, from religious scruples, adopts a form of marriage somewhat different to the ordinary form, it would be going too far to hold that these marriages are void, and thus to bastardize a whole community, simply because the sect and its practices are of recent origin."¹

The Provisions of the Marriage Act (III. of 1872), apparently apply to the Progressive Brahmos, but have no reference to the Adi or Conservative Brahmos who claim to be Hindus.

MARRIAGE CEREMONIES.

Betrothal.

It is usual, but not necessary, that marriage should be preceded by a betrothal, or formal promise by the father, or other guardian,² to give the girl in marriage.³ Such betrothal is revocable,⁴ and is not, in law, any obstacle to a marriage with another man.⁵

Effect of breach of promise.

A promise of marriage cannot be enforced by a suit for specific performance,⁶ but a refusal to complete a betrothal, or a promise of marriage, by an actual marriage would give to the injured party a right to recover from the person making the promise compensation for the loss, if any, sustained by the breach of promise.⁷ In case of such breach, a father, or guardian, would be entitled to recover money properly expended in

¹ Banerjee's "Law of Marriage," 2nd ed., p. 224. As to the marriage of Brahmos, see *ibid.*, pp. 99, 100, 253, and *Sonaluzmi v. Vishnuprasad Hapiprasad* (1903), 28 Bom. 597; 6 Bom. L. R. 58, where a bigamous marriage of members of the Brahmo Samaj was held to be invalid. See *Muthusami Mudaliar v. Masilamani* (1909), 33 Mad. 342.

² *Ante*, pp. 42, 43.

³ This is called *vagdana*, or gift by word. Banerjee's "Law of Marriage," 2nd ed., p. 82; Wilson's "Glossary," p. 538.

⁴ See *In the matter of Gunput Narain Singh* (1875), 1 Calc. 74; *Umed Kika v. Nagindas Narotamdas* (1870), 7 Bom. H. C. (O. C.) 122; Sircar's "Vyavastha Darpana," 2nd ed., pp. 645, 646. Steele, 24, 160.

Banerjee's "Law of Marriage," 2nd ed., pp. 51, 84, 85.

⁶ *Ante*, p. 33.

⁷ Act I. of 1877 (Specific Relief), s. 21, cl. b. See illustration to that section, "A contracts to marry B." See *In the matter of Gunput Narain Singh* (1875), 1 Calc. 74; *Umed Kika v. Nagindas Narotamdas* (1870), 7 Bom. H. C. (O. C.) 122.

⁸ Act IX. of 1872 (Contracts), s. 73. *Purshotamdas Tribhovandas v. Purshotamdas Mangaldas Nathubhoy* (1896), 21 Bom. 23; *Mulji Thakersey v. Gombi* (1887), 11 Bom. 412; *Umed Kika v. Nagindas Narotamdas* (1870), 7 Bom. H. C. (O. C.) 122, at p. 136. See *Nowbut Singh v. Lad Koor* (*Mussumat* (1873), 5 N. W. P. 102; *In the matter of Gunput Narain Singh* (1875), 1 Calc. 74, at p. 76.

contemplation of such marriage.¹ Such suits cannot be brought in a Provincial Small Cause Court.²

Should the betrothed damsel die before the marriage, the bridegroom is entitled to recover back the presents given by him to her, subject to paying such expenses as have been incurred.¹

There can be no valid marriage in any form without a substantial performance of the requisite religious ceremonies.⁴

Necessity for ceremonies.

Even when the *gandharba* form of marriage⁵ is permissible by custom the Courts will not recognize it unless religious rites have been performed, although the gift of the bride is in a marriage in that form unnecessary.⁶

Hindu law does not recognize a marriage contracted by a Hindu, otherwise than with Hindu ceremonies, as, for instance, while he is a convert to another religion.⁷

The ceremonies vary according to local or family, or caste usage.⁸

Nature of ceremonies.

The ceremonies which are usually performed⁹ are described in detail by H. T. Colebrooke,¹⁰ and in lesser detail in Banerjee's "Law of Marriage"¹¹ and in Bhattacharya's "Hindu Law."¹² See also Risley's "Tribes and Castes of Bengal," vol. i. pp. 148-152.

The ceremonies usually commence with the performance of the *nandi-mukh*, or *vridhi shradda*, by the bride's father in honour of his ancestors,¹³

Usual ceremonies.

¹ "Mitakshara," chap. ii. s. 11, para. 28; *Rambhat v. Timmaya* (1892), 16 Bom. 673; *Jogeswar Chakrabatti v. Panch Kauri Chakrabatti* (1870), 5 B. L. R. 395.

² Act IX. of 1887, Sched. II., art. 35; *Kali Sunker Dass v. Koylash Chunder Dass* (1888), 15 Calc. 833.

³ "Mitakshara," chap. ii. s. 11, paras. 29, 30; "Daya-Krama-Sangraha," chap. ii., s. 1, para. 1.

⁴ See Banerjee's "Law of Marriage," 2nd ed., pp. 94, 95, 98, and texts and other authorities there cited. Sircar's "Vyavastha Darpana," 2nd ed., p. 650. Strange's "Hindu Law," vol. i. p. 42.

⁵ *Ante*, pp. 51, 52.

⁶ *Brindavyna v. Radhamani* (1888), 12 Mad. 72; *Harī Krishna Devi Garu (Sri Gajapaty) v. Radhika Patta Mahadevi Garu (Sri Gajapaty)* (1865), 2 Mad. H. C. 369, at p. 374. See Strange's "Hindu Law," vol. i. p. 42. Sircar's "Vyavastha Dar-

pana," 2nd ed., p. 650.

⁷ *Muthusami Mudaliar v. Masslamani* (1909), 33 Mad. 342, at pp. 348, 349.

⁸ (1866) 3 Mad. H. C. App. vii.

⁹ These ceremonies are observed whether the marriage be strictly in the *Brahma* form, or whether, in consequence of a payment having been made to the bride's family, the marriage is in the *Asura* form; Banerjee's "Law of Marriage," 2nd ed., p. 87; *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 316, at p. 319; *Chunilal v. Surajram* (1909), 33 Bom. 433; 11 Bom. L. R. 708; *S. Authikesavulu Chetty v. S. Ramanujam Chetty* (1909), 32 Mad. 512.

¹⁰ Essay III. on the religious ceremonies of the Hindus and of the Brahmans especially, "Asiatic Researches," vol. vii. p. 288.

¹¹ 2nd ed., p. 90.

¹² 2nd ed., chap. viii.

¹³ The performance of this *shraddh* is

and the ceremonious bathing of the bride. On the bridegroom coming to the house he is ceremoniously received, and certain ceremonies, the most important of which is the gift of the bride to the bridegroom,¹ are observed. On the night of that day, or on the day following, the operative marriage ceremonies are performed by the bridegroom and bride. This is called *panigrahana*, or the acceptance of the bride's hand by the bridegroom. The sacred fire is kindled and oblations are made. The bridegroom takes the bride's hand, she steps on a stone. The bridegroom recites a fixed text. A hymn is chanted. The bride and bridegroom walk round the fire, and then comes the most material of the marriage rites. The bride is conducted by the bridegroom, and directed by him to step successively into seven circles, a text being recited at each step. This is called *Saptapadi*. On the taking of the seventh step, and not until then, the marriage is complete and irrevocable.² The bride thenceforth becomes a member of her husband's family.³

Other ceremonies which are not essential to the validity of the marriage are subsequently performed.⁴

Conditional marriage.

Sata (exchange) marriage, which, according to the custom of the *Kudwa Kunbi* caste, is conditional upon the bridegroom's father providing a girl to be married to the son of the bride's father, does not take effect until the condition has been performed, although the marriage ceremonies have been completed.⁵

Remarriage of widow.

Whatever words spoken, ceremonies performed, or engagements made on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, have the same effect, if spoken, performed, or made on the marriage of a Hindu widow; and no marriage can be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a widow.⁶

Consummation, †

Although certain ceremonies are usual when the wife attains puberty, consummation is not necessary to the validity of a Hindu marriage.⁷

not essential; *Brindaban Chandra Kurmoker v. Chandra Kurmoker* (1885), 12 Cal. 140, at p. 142.

¹ This transfers the guardianship of the girl.

² *Brindaban Chandra Kurmoker v. Chandra Kurmoker* (1885), 12 Cal. 140, at p. 143. See *Venkatacharyulu v. Rangacharyulu* (1890), 14 Mad. 316, at p. 318. Colebrooke's "Essay on the Religious Ceremonies of the Hindus, Asiatic Researches," vol. vii. p. 303. Strange's "Hindu Law," vol. i. p. 37. Strange's "Manual," para. 38. "Manu," chap. viii. para. 227. Colebrooke's "Digest," vol. ii.

pp. 487, 488.

³ Bhattacharya's "Law of the Joint Family," pp. 140, 141.

⁴ For instance, see *Vaskuntam Ammanar v. Kallapuram Ayyangar* (1902), 26 Mad. 497.

⁵ *Ugri (Bai) v. Purshottam Bhudar (Patel)* (1892), 17 Bom. 400.

⁶ Hindu Widow's Remarriage Act (XV. of 1856), s. 6.

⁷ *Administrator-General of Madras v. Anandachari* (1886), 9 Mad. 466, at p. 470; *Dadaji Bhikaji v. Rukmabai* (1886), 10 Bom. 301, at p. 311; Strange's "Hindu Law," vol. ii. 32, 33.

There may be a custom by which a ceremony is necessary on the wife obtaining puberty.¹

DISPUTES AS TO MARRIAGE.

The Courts have power to determine the validity of a marriage either in a suit properly constituted for that purpose, or in a suit or proceeding in which the question incidentally arises.²

Jurisdiction to determine validity of marriage.

For instance, the question may arise in a suit for the possession of property, or for the restitution of conjugal rights, or in a proceeding relating to the guardianship of a minor, or as to the right to letters of administration, or in a criminal prosecution for bigamy, or adultery, or for enticing away a married woman.

A suit will lie for a declaration that the defendant was not, as he or she alleged himself or herself to be, the husband, or wife of the plaintiff.³

Suit for jactation of marriage.

A decision as to the fact or validity of a marriage can only bind the parties to the litigation,⁴ and then only if the case complies with the conditions prescribed by s. 11 of the Civil Procedure Code, 1908.⁵

Only binds parties.

Where it has been proved that a marriage has been celebrated there is a presumption that it is valid in law,⁶ and that all the necessary ceremonies were performed.⁷

Presumption as to validity of marriage.

A strong presumption arises when the parties are recognized

¹ *Boolechand Kollta v. Jankoo* (1876), 25 W. R. C. R. 386.

² See *Aunjoya Das v. Prahlad Chandra Ghose* (1870), 6 B. L. R. 243; 14 W. R. C. R. 403.

³ See *Mir Azmat Ali v. Mahmud-ul-nissa* (1897), 20 All. 96.

⁴ See *Bromhomoyee v. Kash Chunder Sen* (1881), 8 Cal. 266; 10 C. L. R. 91.

⁵ Act V. of 1908; Cf. Act XIV. of 1882, s. 13. See Evidence Act (I. of 1872), s. 43.

⁶ *Inderun Valungypooly Taver v. Ramaswamy Pandya Talaver* (1869), 13 M. I. A. 141, at p. 158; 3 B. L. R. P. C. 1, at pp. 3, 4; 12 W. R. P. C. 41, at p. 42; *Mouji Lal v. Chandrabati Kumari (Musammatt)* (1911), 39 I. A. 122; 38 Cal. 700; 15 C. W. N. 790; 13 Bom. L. R. 534; *Fakir-*

gauda v Gangi (1896), 22 Bom. 277, at p. 279. As to the proof of a marriage, see *Luchmi Koer v. Roghunath Das (Chowdhry Mohunt)* (1900), 27 I. A. 142; 27 Cal. 971; 4 C. W. N. 685. Act I. of 1872, s. 50. See *Mukhusami Mudahar v. Maslamani* (1909), 33 Mad. 342.

⁷ *Brindabun Chandra Kurmoker v. Chundra Kurmoker* (1885), 12 Cal. 140, at pp. 142, 143; *Administrator-General of Madras v. Anandachari* (1886), 9 Mad. 466, at pp. 469, 470.

"If the evidence was sufficient to prove the performance of some ceremonies usually observed on such occasions, a presumption is always to be drawn that they are duly completed, until the contrary is shown." *Dwals (Bai) v. Moti Karsan* (1896), 22 Bom. 509, at p. 512.

by all persons concerned as man and wife, and so described in important documents and on important occasions.¹

Suit for restitution of conjugal rights.

It has been held by a Bench in the Bengal High Court² that this presumption, although it applies to questions of inheritance, does not apply to a suit for restitution of conjugal rights, and that in such a suit the performance of the ceremonies must be strictly proved, but in an earlier case another Bench of the same Court³ applied the presumption to a similar suit. It is submitted that there is no valid reason for making this distinction. Evidence of treatment is sufficient to prove a marriage, even in a suit for restitution of conjugal rights, where the parties are not subject to the Indian Divorce Act,⁴ which, of course, Hindus are not, so *a fortiori*, evidence of the marriage having been celebrated would, it is submitted, be sufficient.

Widow.

This presumption applies also in the case of the remarriage of a widow.⁵ It has no application when a former valid subsisting marriage of the woman has been proved.

Presumption as to form of marriage.

There is also a presumption even among *Sudras*⁷ that the marriage was according to one of the approved forms.⁸ As the *Brahma* form is the only one remaining of such forms,⁹ it follows that there is a presumption that the marriage was in accordance with the *Brahma* form.

Offences relating to marriage.

In prosecutions under ss. 494, 495, 497, and 498 of the Indian Penal Code¹⁰ the fact¹¹ and validity¹² of the marriage must be strictly proved.¹³

¹ *Mouji Lal v. Chandrabatti Kumari (Musammat)* (1911), 38 I. A. 122; 38 Calc. 700; 15 C. W. N. 790; 13 Bom. L. R. 534.

² *Suryamoni Dosi v. Kalikanta Das* (1900), 28 Calc. 37, at p. 50; 5 C. W. N. 195, at pp. 204, 205.

³ *Brindabun Chandra Kurmoker v. Chundra Kurmoker* (1885), 12 Calc. 140, at pp. 142, 143.

⁴ Act I. of 1872 (Evidence), s. 50; see *Chellammal v. Ranganatham Pillai* (1910), 34 Mad. 277; *Mouji Lal v. Chandrabatti Kumari (Musammat)* (1911), 38 I. A. 122; 38 Calc. 700; 15 C. W. N. 790; 13 Bom. L. R. 534.

⁵ *Lachman Kuar v. Mardan Singh* (1886), 8 All. 143.

⁶ *In re Millard* (1887), 10 Mad. 218, at p. 221.

⁷ *Jaganath Raghunath v. Narayan* (1910), 34 Bom. 553; 12 Bom. L. R. 545; *Trikuandas Damodhar v. Haridas*

Morarji (1907), 31 Bom. 583, at p. 587.

⁸ *Thakoor Deyhee (Musummat) v. Rai Baluk Ram* (1866), 11 M. I. A. 139, at p. 175; 10 W. R. P. C. 3, at p. 9; *Jaganath Prasad Gupta v. Runjit Singh* (1897), 25 Calc. 354, at p. 360; *Gojabas v. Maloji Raje Bhosle (Shrmant Shahajnao)* (1892), 17 Bom. 144, at p. 117; *Judoonath Sircar v. Bussunt Coomar Roy Chowdhry* (1873), 11 B. L. R. 286, at p. 288; 16 W. R. C. R. 105, at p. 106; *Kasthe v. Kulladasi Koundan*, Mad. dec. of 1860, p. 201, Norton L. C. 5; *S. Authikesavulu Chetty v. S. Ramana-jam Chetty* (1909), 32 Mad. 512.

⁹ *Ante*, p. 50.

¹⁰ Act XLV. of 1860.

¹¹ *Empress v. Pitambur Singh* (1879), 5 Calc. 566; 5 C. L. R. 597.

¹² See *Daneah Sheikh v. Tahir Mandal* (1902), 7 C. W. N. 143.

¹³ Act I. of 1872 (Evidence), s. 50.

DIVORCE.

Divorce is unknown to the general Hindu law.¹

Divorce is allowed by custom in certain localities and among certain low castes.²

As to the castes and localities in which such custom exists, see Steele's "Law and Custom of Hindu Castes," pp. 168, 169, Risley's "Tribes and Castes of Bengal;" Crooke's "Tribes and Castes of the North-Western Provinces and Oudh;" Banerjee's "Law of Marriage," 2nd ed., pp. 337-399; Mayne's "Hindu Law," 7th ed., pp. 114-116.

Where it is allowed by custom, a divorce by mutual agreement is recognized by law.³

Although matters of divorce are frequently adjudicated upon by a *panchayet*, or assembly of a caste, such *panchayet* has no power to declare a marriage void or to give permission to a woman to remarry. In such castes a divorce is generally not effectual, except with the authority of the *panchayet*.⁵

It is incompetent to Hindus at the time of their marriage to arrange that the marriage be void in certain events,⁶ whether divorce be or be not permissible in the particular caste.

Except under the circumstances provided for in Act XXI. of 1866, the Courts have no power to decree a divorce.⁷

A dissolution of marriage is not effected by the adultery⁸ of the husband or wife.

The only remedy which a blameless wife has against an offending husband is to obtain a decree for her separate maintenance,⁹ such decree being practically equivalent to a decree for judicial separation.¹⁰

¹ *Kudomee Dossee v. Joteeram* Kolta (1877), 3 Cal. 305; *Thapita Peter v. Thapita Lakshmi* (1894), 17 Mad. 235, at p. 236; "Manu," chap. ix. par. 46, 101.

² See *Kudomee Dossee v. Joteeram* Kolta (1877), 3 Cal. 305; *Reg. v. Sambhu Raghu* (1876), 1 Bom. 347; *Reg. v. Karsan Goja* (1864), 2 Bom. H. C. 124; *Khemkor v. Umiasankar Ranchhor* (1873), 10 Bom. H. C. 381; *Rahi v. Govinda Valad Teja* (1875), 1 Bom. 97, at p. 114; *Dyaram Doolubh v. Umba (Baee)* (1843), Morley's "Digest," vol. 1 N. S. p. 181; *Kasee Dhoolubh v. Ruttun Bibee* (1817), 1 Borr. 410.

³ *Sankaralingam Chetti v. Subban Chetti* (1894), 17 Mad. 479. This was a case of members of the potters'

caste in Tinnevely.

⁴ See *Reg. v. Sambhu Raghu* (1876), 1 Bom. 347; *Uji v. Haihi Lahu* (1870), 7 Bom. H. C. A. C. 133.

⁵ See *Rahi v. Govind Valad Teja* (1875), 1 Bom. 97, at p. 114.

⁶ *Sitaram v. Aheere Heerahnee (Mussamut)* (1873), 11 B. L. R. 129; 20 W. R. C. R. 49.

⁷ The Courts seem formerly to have granted divorces. See *Kaseeram Kriparam v. Umbaram Hureechund* (1811), 1 Borr. 387.

⁸ *Subbaraya Pillai v. Ramasami Pillai* (1899), 23 Mad. 171, at pp. 177, 178.

⁹ Post, pp. 73, 74.

¹⁰ See *Sitanath Mookerjee v. Haimabutti Dabee (Sreemutty)* (1875), 24 W. R. C. R. 377, at p. 379.

Indian
Divorce Act.

It is unsettled whether the Indian Divorce Act¹ has any application to a Hindu marriage contracted before the conversion of the parties to Christianity. The High Court of Bengal has held that it applies,² but the High Courts of Madras,³ Bombay,⁴ and Allahabad,⁵ have taken a different view. It is submitted that the latter view is correct.

Change of
religion.

The change of religion⁶ or the excommunication from caste⁷ of either party does not effect a divorce.

Divorce at
instance of
convert to
Christianity.

Where a Hindu husband or wife is deserted or repudiated on the ground of his or her conversion to Christianity, a decree for divorce can, under the provisions of the Native Converts Marriage Dissolution Act (XXI. of 1866),⁸ be made in favour of the person so deserted or repudiated, and the parties can marry again as if the prior marriage had been dissolved by death.⁹

¹ IV. of 1869

² *Gobardhan Dass v. Jasadamon Dass* (1891), 18 Calc. 252.

³ *Thapita Peter v. Thapita Lakshmi* (1894), 17 Mad. 235; *Perianayakam v. Pottukanni* (1890), 14 Mad. 382.

⁴ *Magania v. Premsingh* (1907), 8 Bom. L. R. 856.

⁵ *Zuburdust Khan* (1870), 2 N. W. P. 370.

⁶ *Government of Bombay v. Ganga* (1880), 4 Bom. 330; *Administrator-General of Madras v. Anandachari* (1886), 9 Mad. 466; *Perianayakam v. Pottulanni* (1890), 14 Mad. 382, at p. 384; *Thapita Peter v. Thapita Lakshmi* (1894), 17 Mad. 235, at p. 239; *In re Millard* (1887),

10 Mad. 218; *In the matter of Ram Kumari* (1891), 18 Calc. 264; *Gobardhan Dass v. Jasadamon Dass* (1891), 18 Calc. 252, at pp. 254, 255; *Contrá Sinammal v. Administrator-General of Madras* (1885), 8 Mad. 169; *Rahmed Bibee v. Roleya Bibee* (1859), 1 Norton's L. C. 12.

⁷ See *Queen v. Marimuttu* (1881), 4 Mad. 243; *Administrator-General of Madras v. Anandachari* (1886), 9 Mad. 466; *Bisheshur v. Mata Gholam* (1870), 2 N. W. P. 300; *contrá Sinammal v. Administrator-General of Madras* (1885), 8 Mad. 169.

⁸ See the procedure provided by that Act.

⁹ S. 19 of the Act.

CHAPTER II.

HUSBAND AND WIFE (*continued*).

RECIPROCAL RIGHTS AND DUTIES.

THE parties to a marriage cannot by arrangement or otherwise vary the rights, duties, and other incidents which the law attaches to the marriage state. Agreement varying rights, etc.

An ante-nuptial agreement, by which the husband undertakes never to remove his wife from the parental abode, is not binding on him.¹ Similarly, no effect can be given to an agreement which provides that, on the husband taking another wife, the first marriage should be void.²

RIGHTS TO SOCIETY AND GUARDIANSHIP.

A husband is entitled to the society of his wife.³ He can require her to live with him wherever he may choose to reside, and to submit herself obediently to his authority.⁵ Rights of husband.

Effect cannot be given to an arrangement between husband and wife that they should separate, and that neither of them shall sue for restitution of conjugal rights, unless the agreement indicates a state of circumstances which would be an answer to a suit for restitution of conjugal rights.⁶ Post-nuptial arrangement for separation

¹ *Tekant Mon Mohini Jemadar v. Basanta Kumar Singh* (1901), 28 Calc. 751; 5 C. W. N. 673; *Pargi v. Sheonarasim* (1885), 8 All. 78, at pp. 79, 80.

² *Sitaram v. Aheeree Heerahnee (Mussamut)* (1873), 11 B. L. R. 129; 20 W. R. C. R. 49.

³ *Binda v. Kaunsiha* (1890), 13 All. 126; *Gatha Ram Mistree v. Moolata Kachin Atteah Domoonee* (1875), 14 B. L. R. 298, at p. 300; 23 W. R. C. R. 179.

⁴ *Tekant Mon Mohini Jemadar v. Basanta Kumar Singh* (1901), 28 Calc. 751, at p. 760; 5 C. W. N. 673, at p. 680. See *Matangini Das v. Jogendra Chunder Mullick* (1891), 19 Calc. 84, at pp. 90, 91; *Binda v.*

Kaunsiha (1890), 13 All. 126; *Sitanath Mookerjee v. Hasmabutty Dabee (Sreemutty)* (1875), 24 W. R. C. R. 377.

⁵ *Tekant Mon Mohini Jemadar v. Basanta Kumar Singh* (1901), 28 Calc. 751, at p. 760; 5 C. W. N. 673, at p. 680; *Sitanath Mookerjee v. Hasmabutty Dabee (Sreemutty)* (1875), 24 W. R. C. R. 377, at p. 379.

⁶ *Rajlukhy Dabee (Sm.) v. Bhootnath Mookerjee* (1900), 4 C. W. N. 488. See *Tekant Mon Mohini Jemadar v. Basanta Kumar Singh* (1901), 28 Calc. 751, at p. 765; 5 C. W. N. 673, at pp. 683, 684; *Moola v. Nundy* (1872), 4 N. W. P. p. 109.

An arrangement for a separation to commence at a future date is contrary to public policy.¹

Guardianship
of minor wife.

A husband, even if he has not attained the age of majority,² is the lawful guardian of the person of his minor³ wife,⁴ in preference to her parents or other relations, unless, according to the custom of the caste or community to which he belongs, he be precluded from such custody until the wife be fit for marital intercourse.⁵

It is the practice among the Hindu community in the Madras Presidency for a wife to be left with her parents until she attains puberty. The husband is only entitled to the custody of her person when such custody is necessary in her interests.⁶

Guardianship
of minor
widow.

After the husband's death the guardianship of his minor widow, and the management of her property, devolve upon the husband's heirs generally, or upon those who are entitled to inherit his estate after her death,⁷ in preference even to her own father.⁸ On failure of her husband's heirs the widow's paternal relations are her guardians, and failing them, her maternal kindred.⁹

Restraint of
wife.

Having regard to the custom of the country that women, at any rate in the higher positions of life, are secluded in the *zenana*, a Hindu husband would apparently be entitled to exercise, within reasonable limits, a certain amount of

¹ *Krishna Aiyar v. Balammal* (1910), 34 Mad. 398; *Merryweather v. Jones* (1863), 4 Giff. 590; 10 Jur. N. S. 90; 10 L. T. 62; referred to in *Tekait Mon Mohini Jemadar v. Basanta Kumar Singh* (1901), 28 Calc. 751, at p. 765; 5 C. W. N. 673, at p. 684.

² Act VIII. of 1890, s. 21.

³ I.e. minor within the meaning of the Indian Majority Act (IX. of 1875).

⁴ Guardians and Wards Act (VIII. of 1890), ss. 19, 41 (d). In the matter of *Dhuronidhur Ghose* (1889), 17 Calc. 298; *Kateeram Dokanee v. Gendhenee (Mussamut)* (1875), 23 W. R. C. R. 178. See *Surjyamoni Das v. Kalikanta Das* (1900), 28 Calc. 37, at p. 45; 5 C. W. N. 195, at p. 201.

⁵ *Suntosh Ram Doss v. Gera Pattuck* (1875), 23 W. R. C. R. 22; *Bool Chand Kalla v. Janokee (Mussu-*

mut) (1875), 24 W. R. C. R. 228; S. C. (1876), 25 W. R. C. R. 386.

⁶ *Arumuga Mudali v. Vvraghava Mudali* (1900), 24 Mad. 255.

⁷ Macnaghten's "Hindu Law," ed. 1829, vol. i. chap. vii. p. 104; vol. ii. chap. vii., cases 1, 3. *Kheter Mones Dassee v. Kishan Mohun Mitter* (1863), 2 Hay, 196; Marshall, 313; *Khudram Mookerjee v. Bonwarial Roy* (1889), 16 Calc. 584; *Kesar (Bas) v. Ganga (Bas)* (1872), 8 Bom. H. C. R., A. C. J. 31; see West and Bühler, 2nd ed., pp. 129, 134, 245, and 556; "Dayabhaga," chap. xi., s. 1, para. 64.

⁸ Macnaghten's "Hindu Law," ed. 1829, vol. ii. chap. vii. case 3, p. 204.

⁹ Macnaghten's "Hindu Law," ed. 1829, vol. i. chap. vii. p. 104.

restraint upon his wife, even if she be an adult, so as to keep her at home.¹

"The Hindu law, while it enjoins upon the wife the duty of attendance, Duty of husband to wife. obedience to, and veneration for, the husband, inculcates that the husband must honour the wife and treat her with affection and courtesy."²

In spite of early texts, which give a husband power to correct his wife,³ it is clear that he is no way justified in chastising or assaulting her. The Indian Penal Code⁴ does not exempt a husband from liability for an offence committed against his wife's person, except that it provides⁵ that sexual intercourse, by a man with his own wife, the wife not being under twelve years of age, is not rape.

A wife is entitled to live with⁶ and to be maintained by⁷ her husband in his house.

The mere fact that she has been excluded from caste does not make the wife a trespasser when coming to her husband's house.⁸ If she has been expelled from his house for proper cause, she might be treated as a trespasser on returning without his leave.

The right of a husband to the society of his wife, and that of a wife to the society of her husband, may be enforced against the other party to the marriage⁹ by a suit for restitution of conjugal rights.¹⁰

A suit for the purpose of obtaining possession of the person of a wife

Suit for possession of person of wife.

¹ See *Matangini Dasi v. Jogendra Chunder Mullick* (1891), 19 Calc. 84, at pp. 90, 91.

² *Matangini Dasi v. Jogenata Chunder Mullick* (1891), 19 Calc. 84, at p. 90.

³ "Manu," chap. viii, paras. 299, 300.

⁴ Act XLV. of 1860.

⁵ S. 375. See *Queen-Empress v. Hurree Mohun Mythee* (1890), 18 Calo. 49.

⁶ See *Binda v. Kaunsilia* (1890), 13 All. 126, at pp. 132, 133; *Gatha Ram Mistree v. Mookhta Kochin Atteah Domoonee* (1875), 14 B. L. R. 298, at p. 300; 23 W. R. C. R. 179.

⁷ See *post*, pp. 72, 73.

⁸ *Queen v. Marimuttru* (1881), 4 Mad. 243.

⁹ As to the remedy against a third person for detaining a wife, see *post*, p. 70.

¹⁰ *Tekait Mon Mohini Jemadai v.*

Basunta Kumar Singh (1901), 28 Calo. 751; 5 C. W. N. 673, *Surjya Moni Dasi v. Kalkanta Das* (1900), 28 Calc. 37, at p. 45; 5 C. W. N. 195, at p. 201; *Dadaji Bhikaji v. Rukmabai* (1886), 10 Bom. 301; *Keshavlal Girdharlal v. Bai Parvati* (1893), 18 Bom. 327; *Binda v. Kaunsilia* (1890), 13 All. 126; *Paigi v. Sheonarain* (1885), 8 All. 78; *Jogendronundini Dossee v. Hurrydos Ghose* (1879), 5 Calc. 500; 5 C. L. R. 65; *Gatha Ram Mistree v. Mookhta Kochin Atteah Domoonee* (1875), 14 B. L. R. 298; 23 W. R. C. R. 179; *Kuroona Moyee Debee v. Gunga Dhur Surmah* (1873), 20 W. R. C. R. 50; *Chotun Bebee v. Ameer Chund* (1866), 6 W. R. C. R. 105; *Melaram Nudal v. Thanooram Bamun* (1868), 9 W. R. C. R. 552. See *Buzloor Ruheem (Moonshee) v. Shumsoonies Begum* (1867), 11 M. I. A. 551, at pp. 606-610; 8 W. R. P. C. 3, at pp. 12, 13.

will not lie against the wife; ¹ but such suit might be treated as in substance one for restitution of conjugal rights.²

Grounds for
refusing
decree.

The circumstances which justify desertion are an answer to a suit for the restitution of conjugal rights.³

Defence to
suit for
restitution.

In *Dadaji Bhikaji v. Rukmabai* ⁴ the Court said, "It may be advisable that the law should adopt stringent measures to compel the performance of conjugal duties; but, as long as the law remains as it is, Civil Courts, in our opinion, cannot, with due regard to consistency and uniformity of practice (except, perhaps, under the most special circumstances), recognize any plea of justification other than a marital offence by the complaining party, as was held to be the only grounds upon which the Divorce Courts in England would refuse relief in *Scott v. Scott*."⁵

The circumstances which justify desertion are—

Cruelty.

1. Cruelty, whether physical or moral, in a degree rendering it unsafe for the wife to return to the power of her husband.⁶

Cruelty to a less degree,⁷ as, for instance, an unfounded imputation upon the wife's chastity,⁸ or taking her jewels from her,⁹ or mere unkindness or neglect¹⁰ short of cruelty, would not seem to be an answer to a

¹ *Chotun Bibec v. Ameer Chund* (1866), 6 W. R. C. R. 105, followed in *Mclaram Nudul v. Thanooram Baman* (1868), 9 W. R. C. R. 552.

² See *Fakirgauda v. Gangi* (1898), 23 Bom. 307, at p. 309.

³ See *Binda v. Kaunsilia* (1890), 14 All. 126, at p. 163.

⁴ (1886), 10 Bom. 301, at p. 313. See *Sahadur v. Rajwanta* (1904), 27 All. 96, following *Binda v. Kaunsilia* (1890), 13 All. 126.

⁵ (1864), 34 L. J. P. & M. 23; cf. Act IV. of 1869, s. 33. See, however, *Muchoo v. Arzoon Sahoo* (1866), 5 W. R. C. R. 235, at p. 236. It is submitted that this application of a principle of English law leads to difficulties, as a suit for judicial separation is inapplicable to Hindus. The matter must be dealt with by Hindu law (*ante*, pp. 2-4). See *Buzloor Ruheem (Moonshee) v. Shumsoonissa Begum* (1867), 11 M. I. A. 551, at p. 614; 8 W. R. P. C. 3, at p. 15.

⁶ *Dular Koer v. Dwarkanath Musser* (1905), 34 Calc. 971; 9 C. W. N. 510; *Yamunabai v. Narayan Moreshvar Pendse* (1876), 1 Bom. 164,

at p. 173; *Matangini Dasi v. Jogen-dra Chunder Mullick* (1891), 19 Calc. 84; *Binda v. Kaunsilia* (1890), 13 All. 126, at p. 184; *Situbai v. Ramchandrarao* (1910), 12 Bom. L. R. 373. Cf. *Buzloor Ruheem (Moonshee) v. Shumsoonissa Begum* (1867), 11 M. I. A. 551, at p. 615; 8 W. R. P. C. 3, at p. 15.

⁷ See *Jogendronundini Dossee v. Hurrydoss Ghose* (1879), 5 Calc. 500, at pp. 502, 507, 508; 5 C. L. R. 65, at pp. 71, 72.

⁸ *Yamunabai v. Narayan Moreshvar Pendse* (1876), 1 Bom. 164, at p. 173.

⁹ *Jeebo Dhon Banyan v. Sundhoo (Mussamut)* (1872), 17 W. R. C. R. 522.

¹⁰ See *Sitanath Mookerjee v. Harnabutti Dabee* (1875), 24 W. R. C. R. 377, at p. 379. As to the ideas of the early Hindu law with regard to the power to correct a wife, see Strange's "Hindu Law," vol. i. pp. 48, 49, referred to in *Yamunabai v. Narayan Moreshvar Pendse* (1876), 1 Bom. 164, at p. 173.

suit for restitution. In a case where a husband, a Brahmin, having expelled his wife, was living in his house with a low caste prostitute, he was refused restitution.¹

There seem to be no reported decisions in India on the subject, and it is unlikely that any cases would occur, but there seems to be no reason why cruelty by the wife should not be an answer to a suit by her for restitution of conjugal rights.

2. The fact that the person suing for restitution of conjugal rights is suffering from a loathsome disease.²

Thus a decree was refused to a husband suffering from leprosy and syphilis.³ It would follow that the communication of a noxious disease would justify a wife in declining to consort with her husband.⁴

If the principle laid down in *Dadaji Bhikaji v. Rukmabai*⁵ be correct, diseases, which are not the result of marital offences, would be excluded from consideration.

3. Adultery by the wife⁶ in a suit by the wife.⁷

Adultery of wife.

As to adultery by a husband, see *post*, p. 67.

It is unsettled whether mere loss of caste is an answer to a suit for restitution of conjugal rights.

Under the ancient law a wife could not be compelled to live with an outcast husband.⁸ The High Courts at Agra⁹ and Allahabad¹⁰ have declined to accept loss of caste as an excuse for refusal to cohabit, but in another Allahabad case¹¹ the High Court made return to caste a condition precedent to a decree. The right to the society of the wife would, it is submitted, be a right within the meaning of Act XXI. of 1850,¹² but the Court would, it is also submitted, have to inquire into the reasons for the degradation, in order to satisfy itself that a decree would not inflict unnecessary hardship upon the wife. Where the loss of caste is

¹ *Dular Koer v. Dwarksnath Misser* (1905), 34 Calc. 971; 9 C. W. N. 510. See *Dular Koeri v. Dwarksnath Misser* (1904), 32 Calc. 234, at p. 239; 9 C. W. N. 270, at p. 274.

² See Colebrooke's "Digest," vol. ii. pp. 414, 490.

³ *Premkumar (Bai) v. Bhika Kallianji* (1868), 5 Bom. H. C., A. C. J. 209. Devala considered phthisis as a disease justifying desertion of a husband. Colebrooke's "Digest," vol. ii. p. 470.

⁴ See *Yamunabai v. Narayan Moreshwar Pendse* (1876), 1 Bom. 164, at p. 173.

⁵ *Ante*, p. 64.

⁶ Colebrooke's "Digest," vol. ii.

p. 415.

⁷ As to a suit by the husband see *Surjyamani Dasi v. Kalikanta Das* (1900), 28 Calc. 37, at p. 47; 5 C. W. N. 195, at p. 203.

⁸ Colebrooke's "Digest," vol. ii. p. 413.

⁹ *Emurtee (Mussamut) v. Nirmul*, N. W. P. Reps., 1864, p. 583.

¹⁰ *Sahadur v. Rajwanta* (1904), 27 All. 96.

¹¹ *Paigi v. Sheonarain* (1885), 8 All. 78. See *Surjyamani Dasi v. Kalikanta Das* (1900), 28 Calc. 37, at pp. 47, 48; 5 C. W. N. 195, at p. 203.

¹² Cf. *Muchoo v. Arzoon Saheo* (1866), 5 W. R. C. R. 235.

capable of expiation the course adopted in the above case was, it is submitted, correct.¹ Where the loss is such as to involve no moral turpitude, the Court would not treat it as an excuse for desertion.

It is not easy to say, in the present state of Hindu society, what offences justify a degradation from caste.²

Change of
religion.

It is also unsettled whether the adoption of another religion by the person seeking restitution is an answer to the suit. It would apparently be an answer in most cases.³

The matter stands to some extent on the same footing as the case of degradation from caste. It would undoubtedly have been under the ancient law a ground for desertion. In the case of a conversion to Christianity the procedure provided by Act XXI. of 1866⁴ would by implication prevent a Court from forcing cohabitation upon a party refusing it on the ground of the conversion of the person seeking it to Christianity. In the case of a conversion to Mahomedanism it would be impossible to enforce cohabitation. The mere abandonment of Hinduism without any formal exclusion from caste would scarcely be an answer. A return to Hinduism after performance of the prescribed expiation would dispose of an objection to cohabitation on the ground of conversion.

As to the effect of a change of religion upon the marriage tie, see *ante* p. 60.

Condonation.

Conduct which has been condoned is no answer to a suit for restitution, unless it has been revived by subsequent misconduct.⁵

A decree for restitution of conjugal rights cannot be refused on any of the following grounds :—

Non-consum-
mation,
Minority.

1. The fact that the marriage has not been consummated.⁶
2. Minority.

The minority of the husband can be no answer to a suit by him, as he is ordinarily entitled to be the guardian of his wife's person,⁷ and it can scarcely be an answer to a suit against him. The minority of the wife would be no answer to a suit by the husband, except under circumstances

¹ Cf. *Jina (Bai) v. Kharwar Jina* (1907), 31 Bom. 366; 9 Bom. L. R. 451.

² See Banerjee's "Law of Marriage," 2nd ed., pp. 185, 186.

³ See *Muchoo v. Arzoon Sahoo* (1886), 5 W. R. C. R. 235, at p. 236. See, however, *In re the wife of P. Streenevassa*, 1 Norton L. C. 13, where the Court ordered the wife of a converted Brahmin to be restored to

him on a writ of *habeas corpus*. If the rule adopted in *Dadaji Bhikaji v. Rukmabai* (*ante*, p. 64) be correct, change of religion would be no answer.

⁴ Ss. 16-18.

⁵ See *Jogendronundini v. Dossee v. Hurry Doss Ghose* (1879), 5 Calc. 500; 5 C. L. R. 65.

⁶ *Dadaji Bhikaji v. Rukmabai* (1886), 10 Bom. 301, at pp. 310, 311.

⁷ *Ante*, p. 62.

which would disentitle him to act as guardian of her person,¹ but it might in some cases be proper to put him upon terms; for instance, that she should be placed by him in charge of a female member of his family.² The minority of the wife could be no answer to a suit by her.

3. The unsoundness of mind of the plaintiff, whether it commenced before or after the marriage.³ The Court would not, however, make a decree, obedience to which might be a danger to the defendant. Insanity.

Sir William Macnaghten⁴ considered that the insanity of the husband justified his wife in deserting him. He relies on a text of *Manu*,⁵ which has been otherwise interpreted.⁶ There is a text to the effect that the insanity of the wife is a ground for excluding her from the husband's bed, and from pilgrimage, but from nothing else.⁷

Mental infirmity short of insanity can clearly be no answer to a suit for restitution.⁸ Mental weakness.

4. A second marriage by the husband.⁹

5. Adultery by the husband.¹⁰

Second marriage.
Adultery.

Where the husband is actually living in adultery,¹¹ or his conduct has been such as to prevent his wife from returning to him without loss of caste (see *ante*, pp. 64, 65) or injury to her self-respect and religious feeling,¹² the Court might refuse a decree.

¹ *Ante*, pp. 62, 65, 66.

² *Surjyamonni Dasi v. Kalikanta Das* (1900), 28 Calc. 37; 5 C. W. N. 195; *Kateeram Dokanee v. Gendhence* (*Mussamut*) (1875), 23 W. R. C. R. 178.

³ See *Binda v. Kaunsilia* (1890), 13 All. 126, at p. 155; Sircar's "Vyavastha Chandrika," vol. ii. p. 489, note. Cf. Indian Divorce Act (IV. of 1869), s. 33; *Hayward v. Hayward* (1858), 1 Sw. & Tr. 81.

⁴ "Hindu Law," vol. ii. p. 62. As insanity at the time of marriage does not invalidate the marriage (*ante*, pp. 30, 31), it could not be an answer to a suit for restitution.

⁵ "Manu," chap. ix. para. 79.

⁶ Gloss of *Culluka*, Colebrooke's "Digest," vol. ii. p. 412; Sircar's "Vyavastha Chandrika," vol. ii. p. 489, note.

⁷ Text of *Devala*, Colebrooke's "Digest," vol. ii. p. 414.

⁸ *Binda v. Kaunsilia* (1890), 13 All. 126, at p. 161.

⁹ *Arumugam v. Tulukanath* (1883),

7 Mad. 187; *Nathubai Bhailul v. Jasher Ruiji* (1876), 1 Bom. 121, at p. 122; *Jeebo Dhon Banyah v. Sundhoo* (*Mussamut*) (1872), 17 W. R. C. R. 522; *Virasvami Chetti v. Appasvami Chetti* (1863), 1 Mad. H. C. 375; see *ante*, p. 32.

¹⁰ *Binda v. Kaunsilia* (1890), 13 All. 126, at p. 164; *Paigi v. Sheonarain* (1885), 8 All. 78, at p. 81; *Gantapalli Appalammu v. Gantapalli Yellayya* (1897), 20 Mad. 470; Macnaghten's "Hindu Law," i. 61, 62. See Strange's "Hindu Law," ii. 46, 47.

¹¹ *Paigi v. Sheonarain* (1885), 8 All. 78, at p. 81. See *Dular Koer v. Dwarkanath Misser* (1905), 34 Calc. 971; 9 C. W. N. 510, *ante*, p. 65; and *Dular Koeri v. Dwarkanath Misser* (1904), 32 Calc. 234, at p. 230; 9 C. W. N. 270, at p. 274. See however, case No. 457 of 1884, 20 Mad. 474, note.

¹² See *Gabind Prasad (Lala) v. Doulat Batti* (1870), 6 B. L. R. App. 85; 14 W. R. C. R. 451.

Impotence.

It is submitted that the impotence of the plaintiff¹ originating after marriage is no answer to a suit for restitution.

Whether it is an answer when it was existing at the time of the marriage would, it is submitted, depend upon whether the Court would set aside the marriage on that account.² *Manu*³ makes no distinction between impotence arising after and impotence arising before marriage, but the text by which he is said to permit a wife to abandon an impotent husband has been differently interpreted.⁴

Where order would be unjust.

Where it would be manifestly unjust to order restitution of conjugal rights, the Court can refuse to make such order.

For instance, in *Moola v. Nundy*,⁵ where, in consequence of the misconduct of the husband, a *panchayet* had adjudged a separation, and the parties had lived apart for thirteen years, the Court declined to make an order.

When right of suit arises.

A right of suit for restitution of conjugal rights arises on a refusal, express or implied, to return to cohabitation.

A formal demand, and refusal, to return to cohabitation is not a condition precedent to such suit,⁶ but there must be a willingness on the part of the plaintiff to resume cohabitation.

The suit must be brought within three years from the time when the right to sue accrues.⁷

Repetition of refusal.

A second suit for restitution based upon the continued disobedience to the decree in the first suit would apparently be barred by the law of *res judicata*,⁸ but a second withdrawal from cohabitation would give a fresh cause of action.⁹

Form of decree.

The decree should declare that the plaintiff is entitled to the restitution of conjugal rights, and that the defendant (if the wife) be directed to go to her husband's house.¹⁰ If the

¹ The impotence of the defendant is no answer, see *Purshotamdas Maneklal v. Mani (Bai)* (1896), 21 Bom. 610. Devala permitted a wife to desert her impotent husband. Colebrooke's "Digest," vol. ii. p. 470.

² See *ante*, p. 31.

³ Chap. ix. para. 79.

⁴ See Colebrooke's "Digest," vol. ii. p. 412; Siroar's "Vyavastha Chandrika," vol. ii. 489, note.

⁵ (1872), 4 N. W. P. H. C. 109.

⁶ *Binda v. Kaunsilia* (1890), 13 All. 126, at pp. 139 *et seq.* See *Fakirgouda v. Gangi* (1898), 23 Bom. 307, at p. 310. For the purpose of jurisdiction the cause of action is

considered to arise at the husband's house. *Lalitagar Keshargar v. Suraj (Bai)* (1893), 18 Bom. 316.

⁷ Limitation Act (IX. of 1908), sch. 1, art. 120. See *Krishna Aiyar v. Balammal* (1910), 34 Mad. 398.

⁸ The Court declined to decide this question in *Keshavlal Girdharlal v. Parvati (Bai)* (1893), 18 Bom. 327, at pp. 329, 331.

⁹ *Keshavlal Girdharlal v. Parvati (Bai)* (1893), 18 Bom. 327.

¹⁰ *Furzum Hossein v. Janu Bibee* (1878), 4 Calc. 588, at p. 591; *Fakirgouda v. Gangi* (1898), 23 Bom. 307, at p. 309; *Chotum Bebee v. Ameer Chund* (1866), 6 W. R. C. R. 105,

defendant be the husband the decree should direct him to restore such rights to his wife.

The Court may make a decree for restitution of conjugal rights upon conditions to be fulfilled by the plaintiff. In one case¹ the decree was made subject to the husband being restored to caste. In another case² the Court required "that the house which the husband provides shall be in every respect fit for the reception of a virtuous and respectable wife." The Court might also require proper security to be taken for the protection of the wife.³

Conditional
decree.

When the party, against whom a decree for restitution of conjugal rights has been made, has had an opportunity of obeying it, and has wilfully failed to obey it, the decree may be enforced by his or her imprisonment,⁴ or by the attachment of his or her property, or by both.

Execution of
decree.

When the attachment has remained in force for one year, if the decree has not been obeyed, and the decree-holder has applied to have the attached property sold, the property may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance (if any) to the judgment debtor on his or her application. Where the judgment debtor has obeyed the decree, and paid all costs of executing the same, which he or she is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made or granted, the attachment should cease. The Court can refuse execution against the person, and may order periodical payments to the wife.⁵

Where the wife is within the Presidency towns of Calcutta, Madras, and Bombay, the right of the husband to the custody of his minor wife may be enforced by an order of the nature of a *habeas corpus*.⁶

Summary
remedies.

followed in *Koobur Khansama v. Jan. Khansama* (1867), 8 W. R. C. R. 467. Cf. Form 19 of schedule to Act IV. of 1860.

¹ *Paigi v. Sheonarain* (1885), 8 All. 78. In *Surjyamoní Dasi v. Kalikanta Das* (1900), 28 Calc. 37, at pp. 47, 48; 5 C. W. N. 195, at p. 203, a husband was required to get his wife restored to caste as a condition of obtaining a decree against her for restitution.

² *Jogendronundini Dossee v. Hurry. Doss Ghose* (1879), 5 Calc. 500, at p. 508; 5 C. L. R. 65, at pp. 72, 73. See *Tekait Mon Mohini Jemadai v.*

Basanta Kumar Singh (1901), 28 Calc. 751, at pp. 755, 766; 5 C. W. N. 673, at pp. 677, 684.

³ *Buzloor Ruheem (Moonshee) v. Shumsoonnissa Begum* (1867), 11 M. I. A. 551, at p. 617; 8 W. R. P. C. 3, at p. 16.

⁴ Six weeks is the limit of imprisonment; Civil Procedure Code (Act V. of 1908), s. 58.

⁵ Civil Procedure Code (Act V. of 1908). Sched. I., ord. xxi., rules 32, 33.

⁶ Criminal Procedure Code (Act V. of 1898), s. 491.

There is also, throughout India, a summary remedy by a magistrate's order.¹

Guardians and
Wards Act.

Where the husband has already had the custody of his minor wife, and she has left, or is removed from, his custody, there is also a remedy under *sec.* 25 of the Guardians and Wards Act.²

Damages.

The husband is also entitled to recover damages from the person harbouring his wife or enticing her away,³ whether or not for improper purposes, and to obtain an injunction against such person from interfering with his wife rejoining him.

"Every person who receives a married woman into his house, and suffers her to continue there after he has received notice from the husband not to harbour her, is liable to an action for damages, unless the husband has, by his cruelty or misconduct, forfeited his marital rights, or has turned his wife out of doors, or has, by some insult or ill-treatment, compelled her to leave him."⁴

A suit for damages against a person committing adultery with a wife would also apparently lie.⁵

It is not possible to lay down any exact rule as to the measure of damages in these cases. The principles adopted in English cases might, to some extent, be applied. On the one hand, the Court should consider the loss of the wife's society, affection, services and assistance in domestic affairs, and the social injury (if any) which the husband is likely to suffer from the act complained of. On the other hand, the behaviour of the husband towards his wife may be taken into account. The capacity of the defendant to pay damages is not generally (if ever) a circumstance for consideration.⁶

RIGHTS OVER PROPERTY.

Power of wife
over her
property.

Except that in times of pressing need he may use his wife's separate property,⁷ and that he has in certain cases a right of

¹ Criminal Procedure Code (Act V. of 1898), ss. 100, 552.

² VIII. of 1890.

³ See *Hurka Shunkur v. Rajejee Munohur* (1908), 1 Borr. 353.

⁴ *Yamunabai v. Narayan Moreswar Pendse* (1876), 1 Bom. 164, at pp. 174, 175. See *Surjyamoní Dasi v. Kalikanta Das* (1900), 28 Calc. 37, at p. 43; 5 C. W. N. 195, at p. 200; *Lall Nath Misser v. Sheoburn Pandey* (1873), 20 W. R. C. R. 92.

⁵ *Soodasun Sain v. Lokenauth Mullick* (1859), Montrion's cases of

Hindu law, p. 619. Strange's "Hindu Law," vol. i. p. 46, vol. ii. p. 41. See *contra*, Macnaghten's "Hindu Law," vol. i. p. 61, and opinions of Colebrooke and Ellis, Strange's "Hindu Law," vol. ii. pp. 40-44.

⁶ See *Kelly v. Kelly* (1869), 3 B. L. R. O. C. 67.

⁷ See *Mohima Chunder Roy v. Durga Monee* (1875), 23 W. R. C. R. 184; *Tukaram v. Gunaji* (1871), 8 Bom. H. C. A. C. 129; "Mitakshara," chap. ii. s. 11, paras. 32, 33; "Dayabhaga," chap. iv. s. 1, paras. 19-25;

inheritance, a husband does not by marriage acquire any beneficial interest in his wife's property.¹

As to his power to control her disposal of property acquired by her in certain ways, see *post*, p. 428.

A Hindu married woman is competent to contract,² but unless she be an agent, either express or implied, of her husband, she does not thereby bind him or his property.³ Her own property is liable for her debts.⁴

A woman is exempt from imprisonment in execution of a money decree.⁵

Where the wife is living with her husband, or is living apart from him under such circumstances⁶ as would justify an order for separate maintenance, the Court would presume an authority to bind the husband for necessities,⁷ but such presumption can be rebutted by evidence that the authority has been revoked.

A Hindu married woman can sue or be sued in her own name.⁸

There is no presumption of law that transactions which stand in the name of the wife are the husband's transactions,⁹ although it may frequently happen that a husband buys property in his wife's name.

"Vivada Chintamani" (Tagore's translation), pp. 264-265; "Vyavahara Mayukha," chap. iv. s. 10, paras. 7-10; "Smriti Chandrika," chap. ix. s. 2, para. 14.

¹ *Sooda Ram Doss v. Joogul Kishore Goopto* (1875), 24 W. R. C. R. 274; *Mohima Chunder Roy v. Durga Monee* (1875), 23 W. R. C. R. 184. See *Ramasami Padeiyatchi v. Virasami Padeiyatchi* (1867), 3 Mad. H. C. 272, at pp. 278, 279; *Reg. v. Natha Kalyan* (1871), 8 Bom. H. C. Cr. C. 11.

² Indian Contract Act (IX. of 1872), s. 11. The Hindu law permitted her to contract, see *Nathubhai Bhailal v. Jawher Raiji* (1876), 1 Bom. 121, at p. 123; *Strange's "Hindu Law,"* vol. i. p. 276.

³ *Pusi v. Mahadeo Prasad* (1880), 3 All. 122.

⁴ *Nahalchand v. Bai Sheva* (1882), Bom. 470; *Oodey Singh (Koor) v. Phool Chund* (1873), 5 N. W. P. 197. See *Nathubhai Bhailal v. Jawher Raiji* (1876), 1 Bom. 121; *Govindji Khimji v. Lakmidas Nathubhoy* (1879), 4 Bom. 318; *Narotam v. Nanka*, (1882), 6 Bom. 473; *In re the petition of Radhi*

(1887), 12 Bom. 229.

⁵ Civil Procedure Code (Act V. of 1908), s. 56.

⁶ *Ante*, pp. 64-66.

⁷ *Virasami Chetti v. Appasvami Chetti* (1863), 1 Mad. H. C. 375, at p. 379; *Pusi v. Mahadeo Prasad* (1880), 3 All. 122; *Nathubhai Bhailal v. Jawher Raiji* (1871), 1 Bom. 121, at p. 123; *Contract Act* (IX. of 1872), s. 187.

⁸ *Bhoyrubchunder Dass v. Madhubchunder Paramanic* (1863), 1 Hyde, 281.

⁹ *Manada Sundari Dabi v. Mahananda Sarnakar* (1897), 2 C. W. N. 367. See *Ran Bijai Bahadur Singh (Diwan) v. Indarpal Singh* (1899), 26 I. A. 227; 26 Calc. 871; 4 C. W. N. 1; *Chowdrani v. Taringy Kanth Lahiry* (1882), 8 Calc. 545; 11 C. L. R. 41 (on appeal this question did not arise, *Dharani Kant Lahiri Chowdhry v. Kristo Kumari Chowdhry* (1886), 13 I. A. 70; 13 Calc. 181); *Narayana v. Krishna* (1884), 8 Mad. 214; *contra*, *Bindoo Bashinee Debee v. Pearree Mohun Bose* (1866), 6 W. R. C. R. 312.

Contract by married woman.

Suit by or against married women.

Power of husband over his property.

Except so far as she may be entitled to maintenance thereout,¹ to a share on partition,² and to rights of inheritance, a wife does not by marriage acquire any interest in her husband's property or any voice in its management.³

Debts of re-married widow.

A person who marries a Hindu widow is not, merely by reason of such marriage, liable for any of the debts of a prior deceased husband of such widow.⁴

Suits between husband and wife.

A husband may sue his wife, and a wife may sue her husband, in respect of any cause of action in the same way as if they were independent of one another.⁵

Theft.

There is nothing in the law to prevent a Hindu husband or wife from being convicted of theft of the property of the other, but having regard to the authority which, when husband and wife are living together, would necessarily arise from the married state, it would generally be difficult to prove a dishonest intention. Where the wife is acting in concert with her paramour the intention would be more obvious, as she would not in that case be likely to suppose that she had authority from her husband.⁶

MAINTENANCE.

Maintenance of wife.

A wife is entitled to receive from her husband⁷ food, raiment, lodging, and provision for religious or other duties incident to the status in life which she occupies.⁸

As to maintenance out of property belonging to a joint family of which her husband is a member, see *post*, pp. 74, 75; and as to her right to a share on partition in lieu of maintenance, see *post*, pp. 316, 317. Except that she may have a right of maintenance against her father-in-law's

¹ See *infra*.

² *Post*, pp. 316, 317.

³ *Sorolah Dossee v. Bhoobun Mohun Neophy* (1888), 15 Calc. 292, at p. 306. See *Punna Bibee v. Radha Kissen Das* (1903), 31 Calc. 476; *Narbadabai v. Mahadeo Narayan* (1880), 5 Bom. 99, at p. 107.

⁴ See Bom. Act VII. of 1866, s. 4. A different rule was, before the passing of that Act, applied by the Courts in the Mofussil of the Bombay Presidency.

⁵ *Strange's "Hindu Law,"* vol. ii. pp. 59, 60; *G. v. K.* (1794), 2 Morley's "Digest," 234; *Colebrooke's "Digest,"* bk. iv. chap. i. s. 1. See

Deokoonwur v. Umbaram Lala (1810), 1 Borr. 370; note, p. 371.

⁶ See *Queen - Empress v. Butchi* (1893), 17 Mad. 401; *Anonymous* (1870), 5 Mad. H. C. App. xxiii.; Act XLV. of 1860, s. 378, illus. (n) and (o).

⁷ *Siddlingapa v. Sidava* (1878), 2 Bom. 624, at p. 628; S. C. 2 Bom. 634; *Macnaghten's "Hindu Law,"* vol. ii. chap. ii. cases i.-iii.; "*Dayabhaga*," chap. iv. s. 1, para. 25; "*Vyavahara Mayukha*," chap. xx. s. 1; *Colebrooke's "Digest,"* vol. ii. pp. 420-421.

⁸ See *Nittokissoree Dossee (Sree-mutty) v. Jogendro Nauth Mullick* (1878), 5 I. A. 55, at p. 57.

estate,¹ she has no right to be maintained by her own or by her husband's relations,² unless they have property belonging to her husband in their hands.³

Except where she has been guilty of infidelity,⁴ a husband may be required to maintain his wife, even though she cannot compel him to restore her to other conjugal rights.⁵

Although under the Hindu law the right of a wife to be maintained by her husband does not depend upon the possession of any property by him,⁶ a wife would gain nothing by a suit against a penniless husband, and could only force him to maintain her by the fruits of his labour by a proceeding under the Criminal Procedure Code.⁷

As to the right of a wife to pledge her husband's credit for necessities, see *ante*, p. 71.

Although the husband may abandon Hinduism, he cannot thereby destroy his wife's right of maintenance.⁸ Abandonment of Hinduism.

The Court can award maintenance to a wife whose marriage has been dissolved under the provisions of the "Native Converts' Marriage Dissolution Act, 1866."⁹ Dissolution of marriage.

Where the husband is excluded from inheritance on the ground of some disqualification,¹⁰ his wife is, if chaste, entitled to maintenance out of the property to which he would have succeeded if he had not been so disqualified.¹¹ If her sons succeed to the inheritance she has the right of a mother.¹² Husband disqualified from inheritance.

A wife would ordinarily be entitled to maintenance in her husband's house,¹³ but when he, without excuse,¹⁴ refuses to allow her to reside with him,¹⁵ or when she is justified in Place of maintenance.

¹ *Post*, p. 204.

² *Iyagaru Soobaroyadoo v. Iyagaru Sashama*, Mad. S. R. 1856, p. 22; *Rangayyan v. Kalyam Ummall*, Mad. S. R. 1860, p. 86, cited in 1 Norton L. C. p. 39.

³ *Ramabai v. Trimbak Ganesh Desai* (1872), 9 Bom. H. C. 283. See *post*, p. 76.

⁴ *Post*, p. 74.

⁵ See "Manu," chap. xi. para. 189.

⁶ *Narbadabai v. Mahadeo Narayan* (1880), 5 Bom. 99, at p. 103. See *Jayanti Subbiah v. Alamelu Mangamma* (1902), 27 Mad. 45, at p. 48.

⁷ *Post*, p. 94.

⁸ See (1868) 4 Mad. H. C. App. iii.

⁹ Act XXI. of 1866, s. 28.

¹⁰ *Post*, pp. 354, 355.

¹¹ "Mitakshara," chap. ii. s. 10, paras. 14, 15; "Dayabhaga," chap. v. para. 19; "Vyavahara Mayukha," chap. iv. s. 17, para. 12; Tagore's "Vivada Chintamani," p. 244; "Smriti Chandrika," chap. v. para. 43.

¹² Banerjee's "Law of Marriage," 2nd ed., p. 144. See *post*, p. 75.

¹³ *Sitanath Mookerjee v. Haimabutti Dabee (Sreemutty)* (1875), 24 W. R. C. R. 377; *Virasvami Chetti v. Appasvami Chetti* (1883), 1 Mad. H. C. 375.

¹⁴ *Ante*, pp. 64-66.

¹⁵ *Nitye Laha v. Soondaree Dossee* (1868), 9 W. R. C. R. 475. See *Sidlingapa v. Sidava* (1878), 2 Bom. 634; *Rampriya v. Bharguram* (1815), 2 Wm. Macn. 109.

residing apart from him,¹ she is entitled to separate maintenance.²

Except where there is such refusal or justification, a wife cannot enforce an arrangement for separate maintenance.³

Release of
right.

A wife cannot release her right of maintenance, but an arrangement fixing the amount of her maintenance will, if fair, be upheld.⁴

The right of a Hindu female to maintenance is one peculiarly needing protection.⁵

Loss of right.

A wife who without just cause deserts her husband,⁶ or refuses to live with him,⁷ or is unchaste,⁸ loses her right of maintenance.

An unchaste wife loses her right of maintenance, even if it has been secured by a decree,⁹ or by an agreement.¹⁰

As to right of an unchaste wife to what is called "starving maintenance," see *post*, p. 78.

A wife does not lose the right by a mere loss of caste.¹¹

Maintenance
of widow.

A widow who succeeds to no property as heir to her husband, is (whether she has or has not a son)¹² entitled to maintenance

¹ *Sitabai v. Ramchandrarao* (1910), 12 Bom. L. R. 373. See *Gabind Pershad (Lalla) v. Doulat Batti* (1870), 6 B. L. R. App. 85; 14 W. R. C. R. 451. As to the circumstances which justify her in declining to live with her husband, see *ante*, pp. 64-66.

² *Matangini Dasi v. Jogendra Chunder Mullick* (1891), 19 Calc. 84; *Sidlingapa v. Sidava* (1878), 2 Bom. 634.

³ *Rajlukhy Dabee (Sm.) v. Bhootnath Mookerjee* (1900), 4 C. W. N. 488.

⁴ *Narbadabai v. Mahadeo Narayan* (1880), 5 Bom. 99, at pp. 104-107.

⁵ *Ibid.*, at p. 107; *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 505; *Comulmoney Dossee v. Ramnath Bysack* (1843), 1 Fulton, 189, at p. 203.

⁶ *Surampalli Bangaramma v. Surampalli Brambaze* (1908), 31 Mad. 338; *Virasvami Chetti v. Appasvami Chetti* (1863), 1 Mad. H. C. 375.

⁷ *Ilata Shavatri v. Ilata Narayanan Nambudiri* (1863), 1 Mad. H. C. 372, at pp. 373, 374; *Kullyanessuree Debee v. Dwarkanath Surmah Chat-*

terjee (1866), 6 W. R. C. R. 116. She does not lose the right when she leaves him by his consent. *Nitye Laha v. Soondaree Dossee* (1868), 9 W. R. C. R. 475.

⁸ See *Pirthee Singh (Rajah) v. Raj Kower (Ranee)* (1873), 1 A. Sup., vol. 203, at p. 210; 12 B. L. R. 238, at p. 247; 20 W. R. C. R. 21, at p. 24; *Ilata Shavatri v. Ilata Narayanan Nambudiri* (1863), 1 Mad. H. C. 372; *Kandasami Pillai v. Murugammal* (1898), 19 Mad. 6.

⁹ *Nubo Gopal Roy v. Amrit Moyee Dossee* (1875), 24 W. R. C. R. 428. See *post*, pp. 85, 87. The decree cannot be altered in execution. There must be a fresh suit. *Ranmalsangji Bhagwatsangji (Maharana Shri) v. Kundan Kuwar (Bai Shri)* (1902), 26 Bom. 707.

¹⁰ See *Nagamma v. Virabhadra* (1894), 17 Mad. 392.

¹¹ Act XXI. of 1850. *Queen v. Marimuttu* (1881), 4 Mad. 243.

¹² *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. 63; *Brinda Chowdhraim v. Radhica Chowdhraim* (1885), 11 Calc. 492, at p. 494.

out of the property in which her husband was interested as owner¹ or coparcener² at the time of his death, or in which he would have been so interested if he had not been disabled from inheritance, or from being a coparcener.³

This applies to impartible property.⁴

A widow is not entitled to maintenance out of property belonging to her husband which had become forfeited to Government on his conviction for rebellion,⁵ but her right would be unaffected by a confiscation on account of the rebellion of her sons, or other heirs of her husband.⁶

A mother is entitled to be maintained by her son, and after his death out of his property,⁷ but with that exception, and also with the exception that a daughter-in-law may enforce a right to maintenance against the property of her father-in-law

Right against relations of husband.

¹ *Brinda Chowdhraïn v. Radhica Chowdhraïn* (1885), 11 Calc. 492, at p. 494; *Narbadabai v. Mahadeo Narayan* (1880), 5 Bom. 99, at p. 106; *Bhagubati Dasi (Srimati) v. Kanailal Mitter* (1872), 8 B. L. R. 225. As to her maintenance out of property which has been divested on adoption, see *Dhurm Das Pandey v. Shamasoondri Dibiah* (1843), 3 M. I. A. 229, at p. 243; 6 W. R. P. C. 43, at p. 45.

² *Golub Koonwur (Mussumat) v. Collector of Benares* (1847), 4 M. I. A. 246, at p. 258; 7 W. R. P. C. 47, at p. 51; *Devi Persad v. Gunwanti Koer* (1895), 22 Calc. 410; *Becha v. Mothina* (1900), 23 All. 86; *Savitribai v. Luximibai* (1878), 2 Bom. 573, at p. 582, and cases there cited; *Jayanti Subbiah v. Alamelu Mangamma* (1902), 27 Mad. 45; *Adhibai v. Cursandas Nathu* (1886), 11 Bom. 199; *Munajappa Hegade v. Lakshmi* (1890), 15 Bom. 234; *Visalatchi Ammal v. Annasamy Sastry* (1870), 5 Mad. H. C. 150; *Subbramaniam Mudaliar v. Kalioni Ammal* (1873), 7 Mad. H. C. 226; *Amrit (Bai) v. Manik (Bai)* (1875), 12 Bom. H. C. 79; *Ramabai v. Trimbak Ganesh Desai* (1872), 9 Bom. H. C. 283; *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. 63; *Lalti Kuar (Mussumat) v. Ganga Bishen* (1875), 7 N. W. P. 261; *Meherban Singh v.*

Sheo Koonwer (Mussumat) (1806), 1 Agra. 106; *Sheo Dyal Tewaree v. Judoonath Tewaree* (1868), 9 W. R. C. R. 61, at p. 67; *Hema Kooeree (Mussumat) v. Ajoodhya Pershad* (1875), 24 W. R. C. R. 474. This rule applies to Khoja Mahomedans, *Rashid Karmali v. Sherbanoo* (1904), 29 Bom. 85.

³ "Mitakshara," chap. ii. s. 10, para. 5; "Dayabhaga," chap. v. paras. 11, 14-16; "Smriti Chandrika," chap. v. paras. 10-14, 20.

⁴ *Sivananjan Perumal Sethuroyer v. Meenakshi Ammal* (1870), 5 Mad. H. C. 377.

⁵ *Gunga Bae v. Hogg* (1867), 2 Ind. Jur. N. S. 124.

⁶ *Golub Koonwur (Mussumat) v. Collector of Benares* (1847), 4 M. I. A. 246; 7 W. R. P. C. 47; explained in *Gunga Bae v. Hogg* (1867), 2 Ind. Jur. N. S. 124; and in *Adhirance Narain Coomary v. Shona Malee Pat Mahadai* (1876), 1 Calc. 365, at pp. 373, 374.

⁷ *Subbarayana v. Subbakka* (1884), 8 Mad. 236; "Manu," chap. viii. para. 389; Sircar's "Vyavastha Darpana," 2nd ed., pp. 375, 376. She has no such right against her step-son or step-grandson. *Daya (Bai) v. Natha Govindlal* (1885), 9 Bom. 279. See *Savitribai v. Luximibai* (1878), 2 Bom. 573, at pp. 582, 583.

after his death,¹ a widow has no legal right of maintenance against any of the relatives of her husband, unless they are in possession of property which belonged to her husband, or in which he was a coparcener.²

In other words, when the husband or his branch was separated from the other members of a family governed by the Mitakshara school of law, or where the husband was governed by the Bengali school of law, the right of the widow to maintenance out of property belonging exclusively to relations of her husband would be confined to the property of her husband's male ascendants in the male line, and of her own male descendants in the male line.

The sale of ancestral property which would have bound her husband if alive, does not give a right against a father-in-law or other coparcener for maintenance.³

As to her rights to a share on a partition between her sons or grandsons, see *post*, pp. 318-320.

Although an heir or other person in possession of property may be liable to a widow for her maintenance, he is not liable to other persons on contracts made by her, even on account of her maintenance.⁴

Residence of widow.

A widow is ordinarily entitled to reside in her husband's family dwelling-house.⁵

She cannot be ousted,⁶ except by a purchaser who has bought under a decree which binds her, or to whom the property has been sold for the purpose of satisfying claims which are paramount to her right of maintenance,⁷ such as for debts incurred for the benefit, or on account of the

¹ *Post*, p. 204.

² *Ganga Bai v. Sita Ram* (1876), 1 All. 170, at pp. 174-177; *Khetramani Dasi v. Kashinath Das* (1868), 2 B. L. A. C. 15, at p. 35; *S. C. Kasheenath Das v. Kheturmonee Dossee* (1868), 9 W. R. C. R. 413, at p. 422; *Ramabai v. Trimbak Ganesh Desai* (1872), 9 Bom. H. C. 283; *Visalatchi Ammal v. Annasamy Sastry* (1870), 5 Mad. H. C. 150; *Savitribai v. Luximibai* (1878), 2 Bom. 573; *Apaji Chintaman Devdhar v. Ganga-bai* (1878), 2 Bom. 632; *Kalu v. Kashibai* (1882), 7 Bom. 127; *Kanku (Bai) v. Jadav (Bai)* (1883), 8 Bom. 15; *Daya (Bai) v. Natha Govindlal* (1885), 9 Bom. 279. See, however, *Timmappa Bhat v. Parmeshriamma* (1868), 5 Bom. H. C. A. C. 130, where Gibbs, J., said (p. 132), "Every Hindu widow, whether her husband was divided from the family or not,

is entitled, when in needy circumstances, to claim from her husband's relatives."

³ *Ganga Bai v. Sita Ram* (1876), 1 All. 170, at p. 177.

⁴ *Ramasamy Aiyar v. Minakshi Ammal* (1865), 2 Mad. H. C. 409.

⁵ *Venkatammal v. Andyappa Chetti* (1882), 6 Mad. 130; *Devkore (Bai) v. Sanmukhram* (1888), 13 Bom. 101.

⁶ *Daleukhram Mahasukhram v. Lallubhai Motichand* (1883), 7 Bom. 282; *Venkatammal v. Andyappa Chetti* (1882), 6 Mad. 130; *Gauri v. Chandramani* (1876), 1 All. 262; *Talemand Singh v. Rukmina* (1880), 3 All. 553. See *Parvati v. Kisaning* (1882), 6 Bom. 567.

⁷ *Jayanti Subbiah v. Alamelu Mangamma* (1902), 27 Mad. 45; *Manilal v. Tara (Bai)* (1892), 17 Bom. 398. See *Mohun Geer v. Tota (Museumat)* (1872), 4 N. W. P. 153;

necessities of the family,¹ or perhaps when another suitable residence is found for her.²

"The right of residence of Hindu females is ordinarily referable to the family house, and a purchaser may be presumed to have notice of that fact."³

This right of the widow is personal to her, and cannot be attached in execution of a decree."⁴

An adult widow⁵ is not bound to reside with the relatives of her husband, and she does not forfeit her right to property or maintenance merely on account of her residing with her own family, or leaving her husband's residence from any other cause than for unchaste or improper purposes.⁶

Where the husband has expressly directed that his wife's maintenance should be contingent on her residing in the family residence with his relatives,⁷ she would only be entitled to maintenance if she resided in the

Bhikam Das v. Pura (1879), 2 All. 141; *Yamnabai v. Nanabhai* (1910), 12 Bom. L. R. 1075.

¹ *Ramanadan v. Rangammal* (1888), 12 Mad. 260; *Yamnabai v. Nanabhai* (1910), 12 Bom. L. R. 1075; *Kisandas v. Rangubai* (1908), 9 Bom. L. R. 382.

² *Mangala Devi v. Dinanath Bose* (1869), 4 B. L. R. (O. C. 72; 12 W. R. O. J. 35.

³ *Ramanadan v. Rangammal* (1888), 12 Mad. 260, at p. 270; *Yamnabai v. Nanabhai* (1910), 3 Bom. L. R. 1075, at p. 1079.

⁴ *Salakshi v. Lakshmayee* (1908), 31 Mad. 500.

⁵ As to a minor widow, see ante, p. 62.

⁶ *Pirthee Singh (Rajah) v. Raj Kower (Ranee)* (1873), 1 A. Sup., vol. 203; 12 B. L. R. 238; 20 W. R. C. R. 21; *Narayanrao Ramchandra Pant v. Ramabai* (1879), 6 I. A. 114, at p. 110; 3 Bom. 415, at p. 421; *Kasturbai v. Shivajiram Devkurna* (1879), 3 Bom. 372 (differing from *Rango Vinayak Dev. v. Yamunabai* (1878), 3 Bom. 44); *Surampalli Bangaramma v. Surampalli Brambaze* (1908), 31 Mad. 338; *Cossinault Bysack v. Hurrosondry Dossee* (1819), Morley's "Digest," vol. ii. p. 198; Norton, 85; S. C. on appeal (1826), Sircar's "Vyavastha Darpana," 2nd ed., p. 97; Macnaghten's "Considerations of Hindu Law," p. 93; Clarke,

91; Montrou's cases, 445; *Mokhada Dossee v. Nundo Lall Haldar* (1901), 28 Calc. 278, at p. 287; 5 C. W. N. 297, at p. 299; *Siddessury Dassee v. Janardan Sarkar* (1902), 29 Calc. 557; 6 C. W. N. 530 (a case of a widowed daughter-in-law); *Koodee Monee Debe v. Tarra Chand Chuckerbutty* (1865), 2 W. R. C. R. 134 (ditto); *Gokibai v. Lakhmidus Khimji* (1890), 14 Bom. 490; *Visalatchi Ammal v. Annasamy Sastry* (1870), 5 Mad. H. C. 150; *Ahollya Bhai Debia v. Luckhee Monee Debia* (1866), 6 W. R. C. R. 37; *Chandrabhagabhai v. Kashinath Vithal* (1866), 2 Bom. H. C. 341, 2nd ed., 323; *Jadumani Dasi v. Kheytramohan Shil* (1854), Sircar's "Vyavastha Darpana," 2nd ed., p. 384; *Shurno Moyee Dassee v. Gopal Lall Doss* (1863), Marshall, 497; *Umrit Koueree v. Kidernath Ghose* (1868), 3 Agra. H. C. 182; *Parvatibai v. Chatru* (1911), 13 Bom. L. R. 1023. In *Raghunadu (Sri) v. Brozo Kishoro (Sri)* (1876), 3 I. A. 154, at p. 191; 1 Mad. 69, at p. 81, the Judicial Committee said that it is in the husband's family that in strict contemplation of law the widow ought to reside.

⁷ *Mulji Bhaishankar v. Bai Ujam* (1888), 13 Bom. 218; *Girianna Murkundi Naik v. Honama* (1890), 15 Bom. 236. See *Shurno Moyee Dassee v. Gopal Lall Doss* (1863),

house in which her husband required her to be maintained, or if she from just cause abstained from residing in that house.¹

Where the family property is so small that the family cannot bear the strain of supporting the widow in a separate lodging, though it might be able to provide her with food in the family house, a Court might well in the exercise of its discretion refuse separate maintenance,² or, at any rate, in fixing the maintenance might decline to allow any amount on account of the expenses of a residence.³

By remarriage a widow loses her right to maintenance out of her husband's estate.⁴

Loss of right:

A widow by unchastity forfeits her right of maintenance,⁵ even if such maintenance has been secured by agreement⁶ or decree;⁷ but where the maintenance has been given by a will it is not forfeited unless there be an express provision in the will.⁸

Where the agreement for maintenance is made by way of compromise of a claim for something more than maintenance, unchastity would not, in the absence of express provision, destroy the right to maintenance.⁹

Marshall, 497; *Pirthee Singh (Rajah) v. Raj Kowar (Ranee)* (1873), 1 A. Sup. Vol. 203, at p. 210; 12 B. L. R. 238, at p. 247; 20 W. R. C. R. 21, at p. 24; *Narayanao Ramchandra Pant v. Ramubai* (1879), 6 I. A. 114, at p. 119; 3 Bom. 415, at p. 421; *Gokibai v. Lakshmidas Khimji* (1890), 14 Bom. 490, at pp. 496, 497; Sircar's "Vyavastha Darpana," 2nd ed., p. 370.

¹ As to "just cause," see *Promothanath Roy v. Nagendrabola Chaudhrani* (1908), 12 C. W. N. 808.

² *Kasturbai v. Shivajiram Devkurna* (1879), 3 Bom. 372, at p. 376; *Godavaribai v. Sagunabai* (1896), 22 Bom. 52.

³ See *Ramchandra Vishnu Bapat v. Sagunabai* (1879), 4 Bom. 261.

⁴ Hindu Widows' Remarriage Act (XV. of 1856), s. 2, *post*, pp. 353, 354.

⁵ *Nagamma v. Virabhadra* (1894), 17 Mad. 392; *Valu v. Ganga* (1882), 7 Bom. 84; *Vishnu Shambhog v. Manjamma* (1884), 9 Bom. 108; *Roma Nath v. Rajonimoni Dasi* (1890), 17 Calc. 674; *Daulta Kuari v. Meghu Tiwari* (1893), 15 All. 382; *Visalatchi Ammal v. Annasamy Sastry*

(1870), 5 Mad. H. C. 150, at p. 160; *Moniram Kolita v. Kerry Kolitany* (1880), 7 I. A. 115, at p. 151; 5 Calc. 776, at p. 786; 6 C. L. R. 322, at p. 330; *Kery Kolitany v. Monceram Kolita* (1873), 13 B. L. R. 1, at pp. 72, 73; 19 W. R. C. R. 367, at p. 405; *Muttammal v. Kamakshy Ammal* (1865), 2 Mad. H. C. 337; *Sinthayee v. Thanakupudayen* (1868), 4 Mad. H. C. 183, at 185; *Bussunt Koomaree (Maharance) v. Kummul Koomarce (Maharance)* (1843), 7 Ben. Sel. R. 144, new edition, 168; Macnaghten's "Hindu Law," vol. ii. chap. ii. case 5, pp. 112, 113; Strange's "Hindu Law," vol. i. p. 172, vol. ii. p. 310; "Mitakshara," chap. ii. s. 1, para. 7; "Dayabhaga," chap. xi. s. 1, para. 48.

⁶ *Nagamma v. Virabhadra* (1894), 17 Mad. 392.

⁷ *Vishnu Shambhog v. Manjamma* (1884), 9 Bom. 108; *Daulta Kuari v. Meghu Tiwari* (1893), 15 All. 382; see *post*, p. 88.

⁸ *Parami v. Mahadevi* (1909), 34 Bom. 278; 13 Bom. L. R. 196.

⁹ *Bhup Singh v. Lachman Kunwar* (1904), 20 All. 321.

It is unsettled whether an unchaste wife or widow, on returning to a "starving moral life, is entitled to what is called "starving maintenance," that is to say, just sufficient food to keep her alive. It is submitted that she is so entitled. In *Honamma v. Timannabhat*¹ the Bombay High Court allowed the right, but it was disallowed by the same Court in *Valu v. Ganga*.² In a recent Bombay case, the following was said, "The general rule to be gathered from 'the texts' is that a Hindu wife cannot be absolutely abandoned by her husband. If she is living an unchaste life, he is bound to keep her in the house under restraint, and provide her with food and raiment just sufficient to support life; she is not entitled to any other right. If, however, she repents, returns to purity and performs expiatory rites, she becomes entitled to all conjugal and social rights, unless her adultery was with a man of lower caste, in which case after expiation, she can claim no more than bare maintenance and residence."³ The Madras High Court⁴ has held that there was no such right. In an earlier case⁵ the same Court considered the question unsettled. In *Romanath v. Rajonimoni Dasi*⁶ the Bengal High Court was inclined to allow the right. Earlier authority is in favour of the right.⁷ It is submitted that the better view is that the right should be allowed.

She is not entitled even to "starving maintenance," so long as she persists in a vicious life,⁸ but it has been held that where "starving maintenance" has been allotted to her by decree, subsequent unchastity does not destroy the right.⁹

More loss of caste does not involve a loss of a right of maintenance.¹⁰

Where there is property liable for the maintenance of a widow, it lies upon the parties resisting the claim to separate maintenance to show that the circumstances are such as to disentitle the widow thereto.¹¹

For example, they may show that she resides separately from her husband's family for immoral purposes,¹² or that the family property is

¹ (1877), 1 Bom. 559.

² (1882), 7 Bom. 84.

³ *Parami v. Mahadevi* (1909), 34 Bom. 273, at p. 283; 12 Bom. L. R. 196, at p. 200.

⁴ *Nagamma v. Virabhadra* (1894), 17 Mad. 392.

⁵ *Visalatchi Ammal v. Annasamy Sastri* (1870), 5 Mad. H. C. 150.

⁶ (1890), 17 Calc. 674, at p. 679.

⁷ Steele, para. xxv. (new edition), p. 36; Strange's "Hindu Law," vol. i. pp. 172, 175, vol. ii. p. 39; "Vyavahara Mayukha," chap. iv. s. 8, para. 9; "Mitakshara," chap. ii. s. 1, paras. 37, 38; Colebrooke's "Digest," vol. ii. pp. 423-425. See Norton's "Leading Cases," vol. i. p. 37.

⁸ *Kandasami Pillai v. Murugammal* (1895), 19 Mad. 6; *Romanath v. Rajonimoni Dasi* (1890), 17 Calc. 674, at p. 679; *Daulta Kuari v. Meghu Tiwari* (1893), 15 All. 382; *Muttammal v. Kamakshy Ammal* (1865), 2 Mad. H. C. 337; see, however, *Parami v. Mahadevi* (1909), 34 Bom. 278; 12 Bom. L. R. 196.

⁹ *Honamma v. Timannabhat* (1877), 1 Bom. 559.

¹⁰ Act XXI. of 1850. See *Queen v. Marimuttu* (1881), 4 Mad. 243.

¹¹ See *Saboo Sidick (Haji) v. Aycshabai* (1903), 30 I. A. 127; 27 Bom. 485; 7 C. W. N. 665.

¹² *Kasturibai v. Shivajiram Devkurna* (1879), 3 Bom. 372, at p. 381.

so small as not reasonably to admit of an allotment to her of a separate maintenance, or that she has other means of maintenance.¹

Transfer of right.

A wife or widow cannot transfer her rights to maintenance.²

Attachment.

It has been said that maintenance which has been fixed by agreement or decree may be transferable,³ but it is submitted that the terms of s. 6 (d) of the Transfer of Property Act (IV. of 1882), prevent such transfer.

There is, it is submitted, no reason why arrears of maintenance should not be transferable.⁴

A right to future maintenance,⁵ or an interest in the income of immovable property assigned by way of maintenance⁶ cannot be attached in execution of a decree, but there is nothing to prevent the attachment of arrears of maintenance.⁷

Loss of maintenance by transfer of property.

Unless their rights are secured by an arrangement or by decree,⁸ it is submitted that a Hindu can by a transfer for consideration dispose of his property so as to deprive his wife or such other person whom he is legally bound to maintain⁹ of any right of maintenance against the property so disposed of,¹⁰ except where such transfer is made with the intention of defeating the right, and the transferee has notice of such intention.¹¹

As to an alienation pending suit, see *post*, p. 89.

Gift or will.

Provided he leaves sufficient property for the maintenance of his widow and those whom by law he is legally bound to

¹ See *Gokibai v. Lakhmidas Khimji* (1890), 14 Bom. 490, at p. 496.

² See *Narbadabai v. Mahadeo Narayan* (1880), 5 Bom. 99, at pp. 103, 104.

³ *Annapurni Nachiar (Rani) v. Swaminatha Chettiar* (1910), 34 Mad. 7, at p. 9.

⁴ See *Endoori Venkataramaniah v. Venkatachinnulu* (1909), 33 Mad. 80.

⁵ Civil Procedure Code (V.) of 1908, s. 60.

⁶ *Gulab Kuar v. Bansidhar* (1893), 15 All. 371.

⁷ *Ibid.* See *A.P. Rajerav Chandrarao v. Nararav Krishna Chandrarao* (1887), 11 Bom. 528; *Asad Ali Mollah v. Haidar Ali* (1910), 38 Calc. 13.

⁸ *Kuloda Prosad Chatterjee v. Jageshwar Koer* (1899), 27 Calc. 194. See

post, p. 85.

⁹ As where the right is to be maintained from coparcenary property, *Jayanti Subbiah v. Alamelu Mangamma* (1902), 27 Mad. 45, at p. 49.

¹⁰ See *Sorolah Dossee v. Bhoobun Mohun Neoghy* (1888), 15 Calc. 292, at p. 306; *Lakshman Ramchandra v. Sarasvatibai* (1875), 12 Bom. H. C. 69; *Ram Kunwar v. Ram Dai* (1900), 22 All. 326; *Venkatammal v. Andiyappa Chetti* (1882), 6 Mad. 130; *Bhagirathi v. Anantha Charia* (1893), 17 Mad. 268.

¹¹ *Imam v. Balamma* (1889), 12 Mad. 334; *Beharilalji v. Rajbai (Bai)* (1898), 23 Bom. 342; *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 516. *Of. Transfer of Property Act* (IV. of 1882), s. 39, *post*, p. 86.

support, but not otherwise, a Hindu can dispose of his property by gift or will, so as to free it from claims to maintenance.¹

He cannot by will exclude her right of maintenance,² and he cannot by disposing of the whole of his property by will³ or gift⁴ deprive his widow of her right to be maintained out of such property.

A concubine, who has been kept by a Hindu up to the time of his death, is entitled to maintenance⁵ from the property (whether ancestral or self-acquired) of her deceased paramour, whether she have children or not,⁶ but loses the right by incontinence.⁷

A woman with whom a Hindu has only had casual intercourse,⁸ or one with whom he has carried on an adulterous intrigue,⁹ acquires no such right.

A discarded concubine has no right of maintenance against her paramour, or his estate.¹⁰

¹ *Debendra Coomarr Roy Chowdhry v. Brojendra Coomarr Roy Chowdhry* (1890), 17 Calc. 886; *Bhoobunmoyee Debia Chowdhraim v. Ramkishore Acharj Chowdhry*, Ben. S. D. A., 1860, p. 485, at p. 489; *Sorolah Dossee v. Bhoobun Mohun Neoghy* (1888), 15 Calc. 292, at p. 306. See *Razabai v. Sadu* (1871), 8 Bom. H. C. A. C. J. 98; *Lakshmi v. Subramanya* (1889), 12 Mad. 490, at p. 494; answers of law officers in *Mulraz Lachmia v. Chalekany Venkata Rama Jaganadha Row* (1838), 2 M. I. A. 54, at p. 57. The widow's claim to maintenance cannot be defeated merely by implication. *Joytura v. Ramhari Sirdar* (1884), 10 Calc. 638; *Comulmony Dossee v. Rammanikta Bysack* (1843), 1 Fulton, 189, at p. 193. See Act XXI. of 1870, s. 3.

² See *Promotha Nath Roy v. Nagan-drabala Chaudhrai* (1908), 12 C. W. N. 808.

³ *Narbadabai v. Mahadeo Narayan* (1880), 5 Bom. 99; *Jamna v. Machul Sahu* (1879), 2 All. 315; *Sorolah Dossee v. Bhoobun Mohun Neoghy* (1888), 15 Calc. 292, at p. 306; *Krishnarao v. Bhagwantrao* (1900), 2 Bom. L. R. 1082; *Becha v. Molhina*

(1900), 23 All. 86.

⁴ See Act IV. of 1882 (Transfer of Property), s. 39, *post*, p. 86.

⁵ *Ningareddi v. Lakshmau* (1901), 26 Bom. 163; 3 Bom. L. R. 647; *Ramanarasu v. Buchamma* (1899), 23 Mad. 282, at p. 291.

⁶ *Yashwantrav v. Kashibai* (1887), 12 Bom. 26; *Khemkor v. Umias Shankar Ranchhor* (1873), 10 Bom. H. C. 381; *Vrandavandas Ramdas v. Yamunabai* (1875), 12 Bom. H. C. 229; Macnaghten's "Hindu Law" vol. ii. chap. ii. case 12; Strange's "Hindu Law," vol. i. p. 174; "Mitakshara," chap. ii. s. 1, paras. 7, 27, 28; "Vyavahara Mayukha," chap. iv. s. 8, para. 5.

⁷ *Yashwantrav v. Kashibai* (1887), 12 Bom. 26. See "Dayabhaga," chap. xi. s. 1, para. 48.

⁸ *Sikki v. Vencatasamy Gounden* (1875), 8 Mad. H. C. 144.

⁹ *Sikki v. Vencatasamy Gounden* (1875), 8 Mad. H. C. 144. In *Khemkor v. Umias Shankar Ranchhor* (1873), 10 Bom. H. C. 381, *ante*, note 6, the connection was apparently an adulterous one.

¹⁰ *Ramanarasu v. Buchamma* (1899), 23 Mad. 282.

Independent
means of
support.

The right to maintenance cannot be enforced where the wife, or widow, or other person claiming it has full independent means of support¹ from property in possession capable of providing maintenance,² whether derived from her husband's property or from some other source. Where there is independent means of support, it must always be taken into account in fixing the amount of maintenance.³

Jewels and other property which are unproductive of income need not be taken into account.⁴

A previous provision of maintenance must be taken into account,⁵ even though it may have been expended.⁶

It has been held that a widow cannot enforce her right against property in which her husband was a coparcener, if the husband's separate property be sufficient for her maintenance.⁷ No reasons were given for this proposition.

Amount of
maintenance,
wife.

The amount which a wife is entitled to receive for her maintenance would ordinarily depend upon the position in life of the husband, the extent of his property, and the claims upon him being taken into consideration.

The views of the husband on the subject of the amount, whether expressed in his will or elsewhere may be taken into consideration, but are not conclusive.⁸

Jaynavalkya⁹ fixed one-third of the husband's property as the proper amount, and this view has been acted upon in Bombay,¹⁰ but the Courts will not now consider themselves bound by any such fixed rule.¹¹

¹ *Siddessury Dossee v Janardan Sarkar* (1902), 29 Calc. 557, at p. 576; 6 C. W. N. 530, at p. 547; *Chandrabhagabai v. Kashinath Vitthal* (1866), 2 Bom. H. C., 2nd ed., 323; *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. 63; *Savitribai v. Luximibai* (1878), 2 Bom. 573, at p. 584; Strange's "Hindu Law," vol. i. p. 171, vol. ii. p. 305. See *Dattatraya v. Rukhmabai* (1908), 33 Bom. 50; 10 Bom. L. R. 770.

² Not a mere right of action, see *Gokibai v. Lakshmidas Khimji* (1890), 14 Bom. 490.

³ See *Maheesh Partab Singh v. Dirgpal Singh* (1899), 21 All. 232.

⁴ *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. 63; Strange's "Hindu Law," vol. ii. p. 305. See *Joytara v. Ramhari Sirdar* (1884), 10 Calc. 638.

⁵ See *Juttendromohun Tagore v.*

Ganendromohun Tagore (1872), I. A. Sup. Vol. 47, at p. 82; 9 B. L. R. 377, at p. 413; 18 W. R. C. R. 359, at p. 373.

⁶ See *Savitribai v. Luximibai* (1878), 2 Bom. 573.

⁷ See *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. 63, at p. 72.

⁸ See *Promotha Nath Roy v. Nagen-drabala Chaudhrani* (1908), 12 C. W. N. 808.

⁹ Colebrooke's "Digest," vol. ii. p. 420; "Vyavahara Mayukha," chap. xx. para. 1; see also Strange's "Hindu Law," vol. ii. pp. 45, 48, 51.

¹⁰ *Ramabai v. Trimbak Ganesh Desai* (1872), 9 Bom. H. C. 283.

¹¹ See Macnaghten's "Hindu Law," vol. ii. case 3; Banerjee's "Law of Marriage," 2nd ed., pp. 143, 144. See cases as to amount of maintenance of widow, *post*, p. 83, notes 4, 5.

The conduct of the claimant to maintenance,¹ and, it is said,² the Conduct. conduct of the husband, may be taken into consideration.

In fixing the amount of maintenance for a widow, pro- Amount of maintenance, widow.
vision must be made for her reasonable wants, namely, for the performance of charities and the discharge of religious obligations, such as religious ceremonies which by custom it is proper for her to perform,³ in addition to reasonable provision for her food, raiment, and residence, having regard to the amount of the estate which is liable for her maintenance, her position in life, and the circumstances of the family.⁴

The following has been held⁵ to be the principle upon which main- tenance is to be allotted to a widow:—

Principle of allotment of maintenance.

"Where a widow has asked for separate maintenance, you look first at the mode of life of the family during her husband's lifetime and you try to find out what amount will be sufficient to allow the widow to live as far as may be consistently with the position of a widow in something like the same degree of comfort and with the same reasonable luxury of life as she had in her husband's lifetime. Then you see what the husband's estate is, and you also see how far that estate is sufficient to supply her with maintenance on this scale, without doing injustice to the other members of the family who also have their rights as heirs, or their rights to maintenance out of the estate."

The principles applicable to the fixing of the amount of maintenance of a widow apply *mutatis mutandis* to the cases of other claimants to maintenance.⁶

The life of austerity in which, according to the Shasters, a Hindu

¹ See *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Sup. Vol. 47, at p. 82; 9 B. L. R. 377, at p. 413; 18 W. R. C. R. 359, at p. 373.

² Banerjee's "Law of Marriage," 2nd ed., 144.

³ See *Sundarji Damji v. Dahibai* (1904), 29 Bom. 316; 6 Bom. L. R. 1052.

⁴ *Nittokissoree Dossee v. Jogendro Nauth Mullick* (1878), 5 I. A. 55, at pp. 56, 57; *Devi Persad v. Gunwanti Koer* (1895), 22 Calc. 410, at p. 418; *Baieni v. Rup Singh* (1890), 12 All. 558; *Hurri Mohun Roy v. Nyantara (Sreemutty)* (1876), 25 W. R. C. R. 474; *Dalel Kunwar v. Ambika Partap Singh* (1903), 25 All. 266, at pp. 269,

270; *Karoonamoyee Dabee (Sm.) v. Administrator-General of Bengal* (1890), 9 C. W. N. 651. See *Narhar Singh v. Dirgnath Kuar* (1879), 2 All. 407, where it was held that the fact that the widow had had a son made no difference in the amount to which she was entitled; *Comulmoney Dossee v. Rammanath Bysack* (1843), 1 Fulton, 189; *Oojul Munnee Dossee v. Jyogopal Chowdhree*, Ben. S. D. A. 1848, p. 491; *Bheeloo (Mussum-maut) v. Phool Chund* (1824), 3 Ben. Sel. R. 223, new edition, 298.

⁵ *Karoonamoyee Dabee (Sm.) v. Administrator-General of Bengal* (1889), 9 C. W. N. 651, at pp. 652, 653.

⁶ See *Maresh Partab Singh v. Dirgnai Singh* (1899), 21 All. 232.

widow is required to live, is not taken into consideration; ¹ but, on the other hand, a widow is not necessarily entitled to be maintained in such a way that she can live in the same style as she lived in when her husband was alive.²

Any saving that she may make by living with her own family is not to be taken into account.³

There is no general rule as to the amount of maintenance to be allotted to the person entitled thereto. The amount of the property available, the claims of the different persons entitled to maintenance thereout, and the reasonable wants of the claimant for the support of himself and his family in accordance with the position of the family must all be taken into consideration.⁴

"The amount of the property . . . is an element in determining the sufficiency of a maintenance, but it cannot be regarded as the criterion. Other circumstances, and even the position and conduct of the claimant . . . may reduce the maintenance."⁵

The necessities of the claimant are also not the sole criterion.⁶

Limited to husband's share.

A widow is not entitled to maintenance in excess of the annual proceeds of the share to which her husband would have been entitled on partition if he were living.⁷

If the produce of such share be insufficient for her support, it might be necessary to sell the share, and support her out of the proceeds.

Funeral expenses.

Her funeral expenses are also payable out of the estate chargeable with her maintenance.⁸

Debts have priority.

The maintenance of a wife or widow is postponed to the payment of the debts of the husband, or of the family, as the case may be.

Maintenance charged on property.

It is not settled whether debts take precedence of maintenance which is charged upon property by a decree or agreement. In two Allahabad

¹ *Hurry Mohun Roy v. Nyantara (Sreemutty)* (1876), 25 W. R. C. R. 474, at p. 476; *Baisni v. Rup Singh* (1890), 12 All. 558, at p. 563; *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. 63, at p. 72.

² *Kalleepersaud Singh v. Kupoor Koowaree* (1865), 4 W. R. C. R. 65.

³ *Hurry Mohun Roy v. Nyantara (Sreemutty)* (1876), 25 W. A. C. A. 474, at p. 476.

⁴ See *Maresh Partab Singh v. Dirpal Singh* (1899), 21 All. 232.

⁵ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), I. A. Sup. Vol. 47, at p. 82; 9 B. L. R. 377, at

p. 413; 18 W. R. C. R. 359, at p. 373.

⁶ *Bhugwan Chunder Bose v. Bindoo Bashinee Dassee* (1866), 6 W. R. C. R. 286.

⁷ *Mahadray Keshav Tilak v. Gangabai* (1878), 2 Bom. 639; *Adhibai v. Cursandas Nathu* (1886), 11 Bom. 199, at p. 209; *Jayanti Subbiah v. Alamelu Mangamma* (1902), 27 Mad. 45, at p. 49; *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. 63, at p. 72.

⁸ *Ratanchand v. Javherchand* (1897), 22 Bom. 818; *Sadashiv Bhaaskar Joshi v. Dhakubai* (1880), 5 Bom. 450; *Vaidyanatha Aiyar v. Aiyakami Aiyar* (1908), 32 Mad. 191.

cases,¹ in which the question did not arise, the Court held that debts had such precedence. It is submitted that maintenance charged by a decree is on the same footing as a mortgage, and takes precedence of subsequent charges, and of all simple contract debts² created by or entered into by the person against whom the decree is made, or his representatives. Maintenance charged by an agreement would also, it is submitted, when there is no fraud upon creditors, take precedence of the debts of the person entering into the agreement, or his representative, provided the agreement complies with the provisions of the Transfer of Property Act.³ Maintenance charged by a will would not take precedence of the debts of the testator.

The maintenance of a wife or widow is in one sense a charge Maintenance not a charge. upon the property of the husband, whether ancestral or self-acquired,⁴ as it is payable thereout, but it is not a charge in the fullest sense of the term, because it does not necessarily bind any part of the property in the hands of a purchaser.⁵ It becomes a complete charge if it be fixed and charged upon such property, or a portion thereof, by a decree or by agreement,⁶ or by a will.⁷

This applies to the claims of other persons entitled to maintenance.⁸

¹ *Shum Lal v. Banna* (1882), 4 All 296, at p. 300; *Gur Dayal v. Kaushila* (1883), 5 All. 367.

² *Kuloda Prosad Chatterjee v. Jageshar Koer* (1899), 27 Cal. 194; *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 524. See cases *post*, note 6.

³ Act IV. of 1882, s. 59. See definition of "mortgage," s. 58.

⁴ *Hemangini Dasi (Srimati) v. Kedarnath Kudu Chowdhry* (1889), 16 I. A. 115; 16 Cal. 758; *Narbadaibai v. Mahadeo Narayan* (1880), 5 Bom. 99; *Ramanadan v. Rangam-mal* (1888), 12 Mad. 260, at p. 271; *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494. In *Kalpagaathachi v. Ganapathi Pillai* (1881), 3 Mad. 184, at p. 191, the right was described as "a mere equity to a provision."

⁵ *Bhartpur State v. Gopal Dei* (1901), 24 All. 160, at p. 163; *Sorolah Dossee v. Bhoobun Mohun Neophy* (1888), 15 Calc. 292, at p. 307; *Sham Lal v. Banna* (1882), 4 All. 296; *Ram Kunwar v. Ram Dai* (1900), 22 All. 326; *Digambari Debi v. Dhan*

Kumari Bibi (1906), 10 C. W. N. 1074. See *Ramanadan v. Rangam-mal* (1888); 12 Mad. 260, at p. 272; *Jayanti Subbiah v. Alamelu Mangamma* (1902), 27 Mad. 45, at p. 49; *Venkatammal v. Andyappa Chetti* (1882), 6 Mad. 130.

⁶ *Mahalakshamma Garu (Sri Maniyam) v. Venkataratnamma Garu (Sri Maniyam)* (1882), 6 Mad. 83, at p. 86; *Bhagirathi v. Ananta Charia* (1893), 17 Mad. 268; *Yam nabai v. Nanabhai* (1910), 12 Bom. L. R. 1075; *Lakshman Ramchandra v. Sarasvatibai* (1875), 12 Bom. H. C. 69, at p. 75, explaining *Heera Lal v. Kousillah (Mussumat)* (1867), 2 Agra, 42; *Juggernath Sawunt v. Odhiranee Narai Koomaree* (1873), 20 W. R. C. R. 126.

⁷ See *Beharilalji Bhagwatprasadji (Shri) v. Rajbai (Bai)* (1898), 23 Bom. 342. Where the will directs maintenance but creates no charge, it would apparently be otherwise, see *Narayanrao Ramchandra Pant v. Ramabai* (1879), 6 I. A. 114, at p. 118; 3 Bom. 415, at p. 420.

⁸ *Beer Chunder Manikkya v. Nobo-deep Chunder Deb Burmono (Raj*

Decree against manager of family.

Where a charge for maintenance has been imposed upon family property by a decree in a suit against the representative of the family, as such, a member of the family who was not a party to a suit cannot dispute the decree.¹ It is otherwise in the case of a decree against the father,² or other member of the family personally. A mere personal decree for maintenance does not create a charge.³

Right to dispute will.

By virtue of her right to maintenance a widow is entitled to contest the *factum* of her husband's will,⁴ or to discuss its construction so far as it affects her maintenance.⁵ She does not thereby acquire a right to dispute the will of her son.⁶

Transfer of property when claim to maintenance thereout.

The question as to whether a *bond fide* purchaser for valuable consideration is bound to satisfy a right of maintenance out of the property purchased by him has been the subject of considerable discussion in the Courts.

Although the 39th section of the Transfer of Property Act,⁷ does not affect any rule of Hindu law,⁸ its provisions are, it is submitted, in the main coincident with the law as laid down in the decisions.⁹

That section is as follows:—

“Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property,¹⁰ and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.”

Illustration.

A, a Hindu, transfers Sultānpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultānpur, A will transfer to her an equal area out of such

Coomar (1883), 9 Calc. 535, at p. 555; 12 C. L. R. 465, at pp. 471, 472.

¹ *Minakshi Achi v. Chinnappa Udayan* (1901), 24 Mad. 689; *Subbanna Bhatta v. Subbanna* (1907), 30 Mad. 324.

² *Muttia v. Virammal* (1887), 10 Mad. 283.

³ *Muttia v. Virammal* (1887), 10 Mad. 283; *Karpakambal Annal v. Ganapathi Subbayyan* (1882), 5 Mad. 234; *Bhagirathi v. Anantha Charia* (1893), 17 Mad. 268; *Minakshi Achi v. Chinnappa Udayan* (1901), 24 Mad. 689, at p. 694; *Adhiranee Narain Coomary v. Shona Malee Pat Mahadai* (1876), 1 Calc. 365.

⁴ *Brinda Chowdhraim v. Radhica Chowdhraim* (1885), 11 Calc. 492.

⁵ *Promotha Nath Roy v. Nagendrabala Chaudhrani* (1908), 12 C. W. N. 808.

⁶ *Garabini Dassi v. Pratap Chandra Shaha* (1900), 4 C. W. N. 602.

⁷ IV. of 1882.

⁸ Act IV. of 1882, s. 2.

⁹ See *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 3 Bom. 494; *Yamnabai v. Nanabhai* (1910), 12 Bom. L. R. 1075.

¹⁰ This includes coparcenary property: *Jayanti Subbiah v. Alamelu Mangemma* (1902), 27 Mad. 45, at p. 49.

of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

The first portion of this section refers only to transfers made with the intention of defeating the right, but the latter portion, taken with the illustration, shows that it extends to other cases.

The following propositions are, it is submitted, justified by the decisions :—

1. A purchaser would be bound by a decree charging the property with the maintenance,¹ except where the purchase had been made in execution of a decree, which bound the widow, or which enforced a claim, which under the Hindu law takes precedence of a claim to maintenance.²

“When the maintenance has been expressly charged on the purchased property, it will be liable, although it be shown that there is property in the hands of the heirs sufficient to meet the claim.”³

2. A purchaser would be bound by an agreement for maintenance which satisfies the conditions required for a mortgage under the Transfer of Property Act,⁴ or which has been followed by possession.

He would also, it is submitted, be bound by an agreement, which did not satisfy such conditions, but which was enforceable against a transferee with notice of such agreement.⁵

3. When the maintenance is not charged on the property by a decree, or by an agreement equivalent to a mortgage, the purchaser is bound by the right to maintenance if the transfer be made with the intention of defeating the right, and he has notice of such intention.⁶

4. When the maintenance is not so charged, and there is no such intention, or if there be such intention, the purchaser

¹ See *Kuloda Prosad Chatterjee v. Jageshar Koer* (1899), 27 Calc. 194; *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 524.

² *Shamlal v. Banna* (1882), 4 All. 296, at p. 300. Such as a debt incurred before the creation of the charge by the person out of whose property the maintenance is payable, *Gur Dayal v. Kaunsila* (1883), 6 All. 367.

³ *Shamlal v. Banna* (1882), 4 All. 296, at p. 300.

⁴ IV. of 1882, ss. 58, 59; *ante*, p. 85, note 3.

⁵ See *post*, p. 88.

⁶ Act IV. of 1882, s. 39. See *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 524. This involves a fraudulent intention: *Digambari, Debi v. Dhan Kumari Bibi* (1906), 10 C. W. N. 1074.

has no notice thereof, a *bond fide*¹ purchaser is not affected by the claim, whether he has notice of such claim or not.²

In earlier cases it was held that a *bond fide* purchaser without notice was not affected by the claim, but that a purchaser with notice of the claim³ or, at any rate, with notice of the existence of a claim likely to be unjustly impaired by the proposed transaction,⁴ or, as it has been put in another case,⁵ a notice that the right cannot be satisfied without recourse to the property purchased, was subject to it.⁶

There is also authority that the widow must exhaust her remedies against the heir, or, at any rate, prove that there is no property of the deceased in the hands of the heir before recovering against the purchaser.⁶ The inconvenience of this doctrine has been pointed out by the Bombay High Court.⁷

The Hindu law places on the same footing all the so-called charges on the inheritance,⁸ as debts,⁹ expenses of initiation of sons,¹⁰ and marriage

¹ I.e. the property must be bought upon a rational and honest opinion that the sale was one which could be effected without any furtherance of wrong; *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 524.

² *Ram Kunwar v. Ram Das* (1900), 22 All. 326; *Bhartpur State v. Gopal Dei* (1901), 24 All. 160. See *Shamlal v. Banna* (1882), 4 All. 290; *Soorja Koer v. Nath Bulsh Singh* (1884), 11 Calc. 102. *Johurra Bibee v. Sreegopal Missee* (1876), 1 Calc. 470; *Natchiarammal v. Gopalakrishna* (1879), 2 Mad. 126, and cases ante, p. 85, notes 5, 6. There are observations in *Amrita Lal Mitter v. Manick Lal Mullick* (1900), 27 Calc. 551, 4 C. W. N. 764, to the contrary effect, but that was a case of a transfer of an undivided share of the whole property.

³ See *Bhagabati Das (Srimati) v. Kanailal Mitter* (1872), 8 B. L. R. 225; 17 W. R. C. 433, note. *Adhiranee Narain Coomary v. Shona Malee Pat Mahadai* (1876), 1 Calc. 365, and cases there cited; *Rachawa v. Shivayogapa* (1893), 18 Bom. 679; *Lakshman Ramchandra v. Sarasvati-bai* (1875), 12 Bom. H. C. 69; *Goluck Chunder Bose (Baboo) v. Ohilla Daye (Ranee)* (1876), 25 W. R. C. R. 100; *Heera Lal v. Kousillah (Mussumat)* (1867), 2 Agra, 42. (In the last case the transfer was in terms subject to a specified sum for the maintenance of the widow.) Any fact which would put the purchaser upon inquiry

would amount to notice. Thus possession by the widow of the family dwelling-house or of other property may amount to notice. See *Ramanadan v. Rangammal* (1888), 12 Mad. 260, at p. 272; *Imam v. Balamma* (1889), 12 Mad. 334; *Yamnabai v. Nanabhai* (1910), 12 Bom. L. R. 1075.

⁴ *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 517.

⁵ *Ramanadan v. Rangammal* (1889), 12 Mad. 260, at p. 269.

⁶ *Adhiranee Narain Coomary v. Shona Malee Pat Mahadai* (1876), 1 Calc. 365, at p. 377; *Ram Churum Tewaree v. Jasooda Koonwer* (1867), 2 Agra. 134; *contrá Goluck Chunder Bose (Baboo) v. Ohilla Daye Ranee* (1876), 25 W. R. C. R. 100.

⁷ *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at pp. 515, 520.

⁸ Strange's "Hindu Law," vol. i. chap. vii. In *Bhartpur State v. Gopal Dei* (1901), 24 All. 160, at p. 163, the Court said, "In fact, a widow's right to receive maintenance is one of an indefinite character, which, unless made a charge upon the property, by agreement or by decree of the Court, is only enforceable like any other liability in respect of which no charge exists."

⁹ "Mitakshara," chap. ii. s. 11, para. 24; "Vyavahara Mayukha," chap. v. s. 4, paras. 12, 14, 16, 17, 19.

¹⁰ "Vyavahara Mayukha," chap. iv. s. 4, paras. 38-40; "Mitakshara,"

of daughters.¹ It could scarcely be that a *bond fide* purchaser, even with notice of the existence of a claim in respect of any one of these so-called charges, should bear the burden of their payment.² In a case where the money had been raised by purchase for the purpose of paying any of these charges it would follow that the purchaser would be under no liability.³ Would it be reasonable in any case, except where the transaction was intended to the knowledge of the purchaser to be a fraud upon the charge, to require a purchaser from an absolute owner to inquire as to the purposes for which the money was being raised? Moreover, the texts give a charge on the inheritance to wives as to widows, but a wife cannot enforce her maintenance against a purchaser from her husband.⁴

"If there is an ample estate out of which to provide for the widow, so that she may get her claim fixed and secured, or if, knowing of the proposed sale, she does not take any step to secure her own interest, no imputation of bad faith, or of abetting it, can be made against the purchaser of a portion of the joint property. If the widow, on the other hand, is not accepting support from the coparcener in satisfaction of her claim; if she lives apart, and the estate is small and insufficient, it is the vendee's duty before purchasing to inquire into the reason for the sale, and not by a clandestine transaction to prevent the widow from asserting her right against the intending vendor."⁵

A right of maintenance is not affected by a transfer made during the pendency of a suit for maintenance,⁶ unless such transfer be effected for the purpose of paying off a debt, which has priority over the claim for maintenance.⁷

Where the suit for maintenance does not seek to charge specific property, the doctrine of *lis pendens* does not apply.⁸

An heir or coparcener,⁹ or devisee,¹⁰ or a purchaser with

Transfer pending suit.

Possession of property by widow.

chap. i. s. 7, paras. 3-6; Colebrooke's "Digest," bk. v. paras. cxxiii., cxxv., cxxxii.

¹ Colebrooke's "Digest," bk. v. para. cxxiv.

² A creditor cannot follow the assets of an estate into the hands of a *bond fide* purchaser. See *Lakshman Ramchandra v. Sarasvatibai* (1875), 12 Bom. H. C. 69, at p. 78, and cases there cited.

³ See *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 499.

⁴ See *Lakshman Ramchandra v. Sarasvatibai* (1875), 12 Bom. H. C. 69, at p. 78.

⁵ *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494,

at p. 517.

⁶ See Transfer of Property Act (IV. of 1882), s. 52; *Jogendra Chunder Ghose v. Fulkumari Dassi* (1899), 27 Cal. 77; *S. C. sub nomine Jogendra Chunder Ghose v. Ganendra Nath Sircar*, 4 C. W. N. 254. See *Amrita Lal Mitt v. Manick Lal Mullick* (1900), 27 Calc. 551; 4 C. W. N. 764.

⁷ *Dose Thimmanna Bhutta v. Krishna Tantri* (1906), 29 Mad. 508.

⁸ *Manika Gramani v. Ellappa Chetti* (1896), 19 Mad. 271.

⁹ *Yellawa v. Bhimangavda* (1893), 18 Bom. 452.

¹⁰ *Razabai v. Sadu* (1871), 8 Bom. H. C. A. C. J. 98.

notice of her claim and possession,¹ cannot oust a widow from property which is liable for her maintenance, without securing her maintenance.

The possession would, it is submitted, be in this case evidence of an arrangement charging the property.²

Right against
proceeds of
sale.

A widow may enforce her right of maintenance against the proceeds of the property in the hands of the heir.³

Where property held on mortgage has been allotted to a widow for her maintenance, and the mortgage has been paid off, the right of the widow attaches to the money.⁴

As to the allotment of a share to a mother or grandmother in lieu of her maintenance in case of partition between her sons or grandsons, see *post*, pp. 318 *et seq.*

Suit for
maintenance.

A widow may, for the purpose of securing her maintenance, sue to compel the persons in possession of the estate, out of which the maintenance is payable, to give security for the due payment of her maintenance, or to have it made a charge upon the estate, and may, in a proper case, obtain an injunction to restrain them from wasting or alienating the estate.⁵ If she does not wish for such charge, she may sue for maintenance already due,⁶ or for a declaration that it is payable, or she may combine a claim for arrears with a prayer for a charge or for security.

Suit for
arrears.

Although a Court may award arrears,⁷ a decree for arrears is not of

¹ *Imam v. Balamma* (1889), 12 Mad. 334; *Rachawa v. Shivayogappa* (1893), 18 Bom. 679.

² *Ante*, p. 85.

³ See *Venkatammal v. Andayappa* (1882), 6 Mad. 130, at p. 135; *Ram Churun Tewaree v. Jasooda Koonwer* (1867), 2 Agra. 134; *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 519.

⁴ *Gambhirmal v. Hamirmal* (1896), 21 Bom. 747.

⁵ *Ramanadan v. Rangammal* (1889), 12 Mad. 260, at pp. 267, 268; *Mahalakshamma Garu (Sri Maniyam) v. Venkataratnamma Garu (Sri Maniyam)* (1882), 6 Mad. 83. See *Brinda Choudhrai v. Radhika Choudhrai* (1885), 11 Calc. 492, at p. 494.

⁶ *Pirthee Singh (Raja) v. Rajkoer*

(*Ram*) (1873), I. A. Sup. Vol. 203; 12 B. L. R. 238; 20 W. R. C. R. 21; *Venkopadhyaya v. Kavari Hengusu* (1864), 2 Mad. H. C. 36; *Sakwarbai v. Bhavanjee Raje* (1864), 1 Bom. H. C. 194; *Narbadabai v. Mahadeo Narayan* (1880), 5 Bom. 99. See *Bhartpur State v. Gopal Dei* (1901), 24 All. 160, at p. 163.

⁷ *Pirthee Singh (Rajah) v. Raj Kover (Ranee)* (1873), I. A. Sup. Vol. 203, at p. 211; 12 B. L. R. 238, at p. 248; 20 W. R. C. R. 21, at p. 25; *Venkopadhyaya v. Kavari Hengusu* (1864), 2 Mad. H. C. 36; *Sybbaramania Mudaliar v. Kakani Ammal* (1873), 7 Mad. H. C. 226; *Mandodari Devi v. Joynarayan Pakraai* (1832), Sir-car's "Vyavastha Darpana," p. 381; Montriop's "Cases of Hindu Law," pp. 408-412.

right, but is in the discretion of the Court.¹ Where the person claiming maintenance has been supported, without having incurred any expense or liability, the Court might well exercise its discretion by refusing to grant arrears.

The Court should discourage a multiplicity of suits for the maintenance of one person, and should, if possible, where necessary, make a decree for future maintenance.²

The widow is not entitled to sue for possession of the property.³

A wife, who is entitled to separate maintenance, has apparently similar remedies.

When maintenance is fixed by an agreement, which is equivalent to a mortgage, it may be enforced by a suit under the Transfer of Property Act.⁴

The widow is entitled to sue all or any of the heirs in possession of property subject to her maintenance.⁵

When the right of maintenance has been made a charge by agreement or decree the claimant may recover the amount from any person holding any portion of the property liable.⁶ The person paying it would have a right of contribution against other persons liable therefor.⁷

The right to sue for maintenance commences when there has been a wrongful withholding of payment of the proper amount.

This withholding may be proved otherwise than by a claim and refusal.⁸ Past non-payment is *prima facie* evidence of such withholding.⁹

¹ *Raghubans Kunwar v. Bhagwant Kunwar* (1899), 21 All. 183.

² See *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at pp. 497, 498; *Vishnu Shambhog v. Manjamma* (1884), 9 Bom. 108, at p. 110.

³ *Oomrao Singh v. Man Konwar* (Muset.) (1867), 2 Agra. 136. As to her right to remain in possession, see *ante*, p. 79.

⁴ IV. of 1862, ss. 58, 68, 100.

⁵ *Ramchandra Dikshit v. Savitribai* (1867), 4 Bom. H. C. A. C. 73, as explained in *Nistarini Dasi* (S. M.) v. *Makhnial Datt* (1872), 9 B. L. R. 11, at p. 27; 17 W. R. C. R. 4.

⁶ *Ramchandra Dikshit v. Savitribai* (1867) 4 Bom. H. C. A. C. 73, explained in *Lakshman Ramchandra v. Sarasvatibai* (1875), 12 Bop. H. C. 69, at p. 73, and in *Nistarini Dasi*

(S. M.) v. *Makhnial Datt* (1872), 9 B. L. R. 11, at p. 27; 17 W. R. C. R. 4.

⁷ *Ramchandra Dikshit v. Savitribai* (1867), 4 Bom. H. C. A. C. 73.

⁸ *Mallikarjuna Prasada Naidu v. Durga Prasada Naidu* (1894), 17 Mad. 362; S. C. on appeal (1900), 27 I. A. 151; 24 Mad. 147; 5 C. W. N. 74; 2 Bom. L. R. 945; *Seshamma v. Subbarayadu* (1893), 18 Mad. 403; *Motilal Prannath v. Kashi* (Bai) (1892), 17 Bom. 45; *Parvatibai v. Chatru* (1911), 36 Bom. 131; 13 Bom. L. R. 1023. See *Narayanrao Ramchandra Pant v. Ramabai* (1879), 6 I. A. 114, at p. 119; 3 Bom. 415, at p. 421.

⁹ *Yarlagadda Mallikarjuna Prasada Nayadu (Raja) v. Yarlagadda Durga Prasada Nayudu (Raja)* (1900), 27 I. A. 151; 24 Mad. 147; 5 C. W. N. 74; 2 Bom. L. R. 945.

The omission to claim maintenance apart from the effect of the law of limitation will not prejudice the claimant when he is obliged from his wants or exigencies to demand it.¹

Limitation of
suit for arrears
of maintain-
ance.

A suit for arrears of maintenance must be brought within twelve years from the time when the arrears are payable.²

Thus past maintenance for twelve years,³ and no more, can be recovered by suit.

The right to maintenance is one accruing from time to time according to the wants and exigencies of the person entitled to be maintained.⁴

Limitation of
suit for
declaration.

A suit for a declaration of a right to maintenance must be brought within twelve years from the time when the right is denied.⁵

Apparently when the right has been denied, and twelve years has elapsed from such denial, the right to maintenance is barred.⁶

Fixing of
amount.

Where the parties do not agree, it is for the Court to fix the rate of maintenance payable.⁷

As to the principles upon which maintenance should be fixed, see *ante*, p. 83.

The Judicial Committee will not interfere with the exercise of the discretion by the Courts in India in fixing maintenance, except where strong grounds exist.⁸

Duty of Court.

The proper course for a Court in ordering maintenance is to make it a charge upon specific property,⁹ or to set apart a sum of money sufficient

¹ *Siddessury Dossee v. Janardan Sarkar* (1902), 29 Cal. 557, at p. 572; 6 C. W. N. 530, at p. 545. See, however, *Abbaku v. Ammu Shet-tati* (1868), 4 Mad. H. C. 137.

² Act IX. of 1908, Sch. I., art. 128.

³ See *Subbramaniam Mudaliar v. Kaliani Ammal* (1873), 7 Mad. H. C. 226; *Venkopadhyaya v. Kavari Hengusu* (1864), 2 Mad. H. C. 36.

⁴ *Narayanrao Ramchandra Pant v. Ramabai* (1879), 6 I. A. 114, at p. 118; 3 Bom. 415, at p. 420; 6 C. L. R. 162, at p. 166.

⁵ Act IX. of 1908, Sch. I., arts. 129, 132.

⁶ *Chhaganlal v. Bapubhai* (1880), 5 Bom. 68. See *Jivi v. Ramji* (1879), 3 Bom. 207.

⁷ *Nubo Gopal Roy v. Amrit Moyee Dossee (Sreemutty)* (1875), 24 W. R. C. R. 428; *Bheeloo (Mussumaut) v. Phool Chund* (1824), 3 Ben. Sel. R.

223 (new edition, 298); *Nistarini Das (S. M.) v. Mahanlal Dutt* (1852), 9 B. L. R. 11, at p. 28.

⁸ *Collector of Madura v. Moottoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 447; 1 B. L. R. P. C. 1, at p. 20; 10 W. R. P. C. 17, at p. 25; *Nittokissoree Dossee (Sreemutty) v. Jogendro Nauth Mullick* (1878), 5 I. A. 55, at p. 56; *Kachi Kaliyana Rengappa Kalakka Thola Udayar v. Kachi Yuva Rengappa Kalakka Thola Udayar* (1905), 32 I. A. 261; 28 Mad. 608; 10 C. W. N. 95; 7 Bom. L. R. 907.

⁹ *Manaha Devi v. Jivan Mal* (1884), 6 All. 317, at p. 621; *Mahalakshamma Garu (Sri Maniyam) v. Venkatarathnamma Garu (Sri Maniyam)* (1882), 6 Mad. 83. See *Vrandavan-das Ramdas v. Yamunabai* (1875), 12 Bom. H. C. 229.

to yield the required allowance, and, if necessary, sell a part of the estate for that purpose.¹ In some cases the Court might be satisfied with security given by the reversioners.

The allowance fixed by the Court for maintenance should cover all necessary expenses for maintenance and house rent.²

It is better to fix an annual sum, and not a share of the income of the estate.³

It has also been held that "in decrees where maintenance is awarded, Courts should insert words which would enable them on application to set aside or modify their orders as circumstances might require."⁴ Such a course would, it is submitted, invite frequent litigation.

The amount of maintenance fixed by a decree may be altered by a decree in a subsequent suit, where the circumstances render an alteration necessary. Alteration of order.

Such modification cannot be made in a proceeding in execution of a decree, unless the terms of the decree are such as to permit of such modification.⁵

As to the loss of the right by remarriage, see *post*, pp. 353, 354.

Maintenance may be cancelled if the wife or widow has become unchaste,⁶ or where, in the case of a wife, the circumstances have so changed that she should be called upon to return to her husband's house. The rate of maintenance may be diminished when there has been such a change in the circumstances of the wife or widow, or of the husband, or person liable for the maintenance,⁷ such change not arising from any fault of his own.⁸ Except where provision is made in the decree for that purpose, an order for maintenance cannot be cancelled or diminished in proceedings in execution.⁹

¹ See *Mundoodaree Dabee (Sree Mooltee) v. Joynarain Puckrgsee* (1801), F. Macn. Cons. 60; *Seeb Chunder Bose v. Goorooopersaud Bose*, F. Macn. Cons. 63.

² *Mansha Devi v. Jiwan Mal* (1884), 6 All. 617, at p. 620.

³ *Jhunia v. Ramsarup* (1880), 2 All. 777.

⁴ *Gopikabai v. Dattatraya* (1900), 24 Bom. 386, at p. 389; 2 Bom. L. R. 191.

⁵ *Ranmalsangji Bhogwatsangji (Maharana Shri) v. Kundankuwur (Bai Shri)* (1902), 26 Bom. 707; 4 Bom. L. R. 531. See *Gopikabai v. Dattatraya* (1900), 24 Bom. 386; *Ramkallee Koer v. Court of Wards* (1872), 18 W. R. C. R. 474.

⁶ *Kandasami Pillai v. Murugammal* (1895), 19 Mad. 6; *Vishnu Shambhog v. Manjamma* (1884), 9 Bom. 108, at p. 110. See *ante*, p. 78.

⁷ *Nubo Gopal Roy v. Amrit Moyee Dossee (Sreemutty)* (1875), 24 W. R. C. R. 428; *Gopikabai v. Dattatraya* (1900), 24 Bom. 386; *Venkanna v. Astamma* (1889), 12 Mad. 183; *Vijaya v. Sripathi* (1884), 8 Mad. 94; *Sidlingapa v. Sidava* (1878), 2 Bom. 624, at p. 630; *Ruka Bai v. Ganda Bai* (1878), 1 All. 594.

⁸ In *Ramkallee Koer v. Court of Wards* (1872), 18 W. R. C. R. 474, it was held that the proper course is to apply for a review of judgment, but it is submitted that the provisions of the Civil Procedure Code (Act V. of 1908), s. 114; Sched. I. order xlv. rule 1, do not permit such application.

⁹ *Ranmalsangji Bhogwatsangji (Maharana Shri) v. Kundankuwur (Bai Shri)* (1902), 26 Bom. 307; 4 Bom. L. R. 531.

The rate may be increased if the cost of food has become greater or the profits of the estate of the husband have materially increased.¹

Where the circumstances have changed, the Court can alter the amount of maintenance fixed by an arrangement.²

Where the alteration in circumstances had arisen from "the act of God," and not from the fault of the owner, maintenance chargeable on an estate by a will can apparently be reduced.³

Execution of decree.

Where a decree directs the payment of future maintenance from time to time, it can be enforced by execution,⁴ and for the purposes of limitation the decree is as to each year's annuity to be regarded as speaking on the day upon which from that year it became operative.⁵

A decree which merely declares a right of maintenance is not capable of execution.⁶

A decree declaring a right of maintenance out of property which had been transferred, cannot be executed personally against the transferee after the property had passed from him.⁷

Remedy in Magistrate's Court.

A Hindu wife can also recover maintenance from her husband under the provisions of Chap. XXXVI. of the Criminal Procedure Code.⁸ The magistrate's order does not interfere with the jurisdiction of a Civil Court.⁹

¹ *Bangaru Ammal v. Vijayamachi Reddiar* (1899), 22 Mad. 175; *Sreeram Bhuttacharjee v. Puddumokhee Debia* (1868), 9 W. R. C. R. 152; *Sidlingapa v. Sidava* (1878), 2 Bom. 624, at p. 630.

² *Rajender Nath Roy v. Putto Soondery Dassee (S. M. Rancee)* (1879), 5 C. L. R. 18.

³ See *Grees Chund Roy (Maharajah) v. Sumbhoo Chund Roy* (1835), 5 W. R. P. C. 98.

⁴ *Ashutosh Banerjee v. Lukhimoni Debya* (1891), 19 Calc. 139; *Asad Ali*

Mollah v. Haidar Ali (1910), 38 Calc. 13.

⁵ *Lakshmi Bai Baguji Oku v. Madhavraj Baguji Oka* (1887), 12 Bom. 65.

⁶ *Venkanna v. Aitamma* (1889), 12 Mad. 183.

⁷ *Dharam Chand v. Janki* (1883), 5 All. 389.

⁸ Act V. of 1898.

⁹ *Deraje Malinga Naika v. Marati Kaveri* (1907), 30 Mad. 400. A suit will not lie to restrain such proceedings. *Ibid.*

CHAPTER III.

RELATIONSHIP OF PARENT AND CHILD, AND ADOPTION.

THE only children now recognized by the general Hindu law as legitimate, are those who are born during the existence of a lawful marriage between their parents,¹ and also sons who have been adopted according to the *dattaka* form.² What are legitimate children.

"The legal presumption in favour of a child born in his father's house of a mother lodged and apparently treated as a wife, treated as a legitimate child by his father, and whose legitimacy is disputed after the father's death, is one safe and proper to be made, and the opposing case should be put to strict proof."³ Presumption as to legitimacy.

As to customs of legitimatory children by subsequent marriage, see *Chuckrodhuj Thakoor v. Beer Chunder Joobraj* (1864), 1 W. R. C. R. 194; *Chinnammal v. Varadarajulu* (1891), 15 Mad. 307.

Children born out of wedlock, although illegitimate, have rights of maintenance,⁴ and, if they are not members of one of the three regenerate classes, illegitimate sons of Sudras possess rights of inheritance under the *Mitakshara* law.⁵ Illegitimate children.

In the country subject to the Mithila school of law, a son may be adopted according to the *Kritrima* form.⁶

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¹ *Pedda Amani v. Zamindar of Marungapuri* (1874), 1 I. A. 282, at pp. 292, 293; 14 B. L. R. 115, at pp. 122, 123. See Act I. of 1872, s. 112, which under the guise of a rule of evidence has practically the effect of declaring the law. *Tirlok Nath Shukul v. Lachmin Kunwari (Musammam)* (1903), 30 I. A. 152; 25 All. 403; 7 C. W. N. 617; *Narendra Nath Pahari v. Ram Gobind Pahari* (1901), 29 I. A. 17; 29 Cal. 111; 6 C. W. N. 146. Sir G. D. Bannerjee ("Law of Marriage," 2nd ed., pp. 155, 156) contends that the Hindu law only recognizes as legitimate those who are begotten in wedlock, see "Manu," chap. x. para. 166; "Mitakshara," chap. i. s. 11, para. 2; "Vya-

vahara Mayukha," chap. iv. s. 9, para. 41; Colebrooke's "Digest," vol. iii. p. 160. - This is apparently the case, but the system of infant marriage prevents the question arising, except perhaps in the case of widows.

² *Rungama v. Atchama* (1846), 4 M. I. A. 1, at p. 96; 7 W. R. P. C. 57, at p. 59; *Thukoo Bae Bhide v. Ruma Bae Bhide* (1824), 2 Borr. 446, at p. 456.

³ *Ramamani Ammal v. Kulanthai Natchear* (1871), 14 M. I. A. 340, at pp. 365, 367; 17 W. R. C. R. 1, at p. 7. See *Gopalasami Chetti v. Arunachelam Chetti* (1903), 27 Mad. 32.

⁴ *Post*, p. 202.

⁵ *Post*, pp. 366, 367.

⁶ *Post*, pp. 151-154.

Pālaka putra.

There is nothing to prevent a Hindu adopting a son, or even a daughter, in the sense that a son can be adopted by an Englishman, i.e. by treating him as a son, and giving or devising property to him, but in that case no rights of inheritance, or of performing religious ceremonies are created by the so-called adoption. The relationship is purely contractual, and is determinable at the option of either of the contracting parties. A son so taken is called a *pālaka putra*.¹

Sons recognized in ancient times.

In ancient times the Hindu law recognized the following descriptions of sons² as legitimate sons, viz. :—

1. *Aurasa*, or legitimate son by a wife.
2. *Kshetrāja*, or son born of a wife duly appointed to raise issue for a husband on failure of any begotten by him.³ This was the son begotten under the practice of *niyoga*,⁴ by which a relative was appointed to raise up issue by the wife of a childless husband, or one deceased without leaving children.⁵
3. *Putrika putra*, or son of an appointed daughter.⁶ In ancient times a man could appoint his daughter to raise up issue to him.
4. *Kanina*, or son of an unmarried woman.
5. *Gudhaja*, or secretly born son of an adulterous wife.
6. *Paunarbhava*, or son of a twice married woman. This included not only the son of a woman who had gone through the ceremony of marriage, but also the son of a woman who had connection with a man.
7. *Sahodha*, or son of a pregnant bride.
8. *Nishada*,⁷ or son of a member of one of the regenerate castes by a Sudra woman.⁸
9. *Dattaka*, or son given in adoption.

¹ See *Nilmadhuv Doss v. Bushumber Doss* (1869), 13 M. I. A. 85; 3 B. L. R. P. C. 27; 12 W. R. P. C. 29; *Kalee Chunder Chowdhry v. Sheel Chunder* (1865), 2 W. R. C. R. 281; *Bhimana Gadu v. Tayappah*, Mad. Dec. of 1861, p. 124; 1 Norton, L. C. 83; Steele, 184. The equivalent expression in Southern India is apparently *manasuputra*, see *Abhachari v. Ramachendrayya* (1863), 1 Mad. H. C. 393, or *abyamana putrum* (son of affection).

² The order in which the several kinds of sons are placed by various authors varies, but necessarily all concur in giving preference to the *aurasa* son.

³ Wilson's "Glossary," p. 298.

⁴ Lit. appointment, a delegated duty or office, Wilson's "Glossary," p. 380.

⁵ Wilson's "Glossary," p. 380. This class of son apparently existed in certain places, such as Orissa, by virtue of a local custom. Banerjee's "Law of Marriage," 2nd ed., p. 171; note to *Sutputtee (Mussummaut) v. Indranund Jha* (1816), 2 Ben. Sel. R. 173 (2nd ed., 221); Macnaghten's "Hindu Law," vol. i. p. 102. This custom seems to be now obsolete, see Sarbadikhar's "Hindu Law of Inheritance," p. 528.

⁶ See *Nursingh Narain v. Bhuttan Loll*, W. R. 1804, p. 104.

⁷ Lit. outcast.

⁸ "Saudra is the son of a twice-born by a Sudra wife: the names *Nishada* and *Parasava* are applied to such sons of a Kshatriya and a Brahmana respectively; by some to the latter." Sircar's "Law of Adoption," p. 23.

10. *Kritrima*, or son made, i.e. where a man without parents accepts a proposal that he should be taken in adoption.

11. *Kritaka*, or son bought.¹

12. *Apavidha*, or son forsaken by his parents, and taken in adoption.

13. *Svayandattaka*, or son self-given. The only difference between this son and the *Kritrima* son seems to be that in the former case the offer comes from the adoptee, and in the latter case it comes from the adopter.

Of these the only sons that are now recognized by Hindu law are the *Aurasa* son, and the *Dattaka* son. According to the Mithila school a *Kritrima* son can be taken in adoption.² Adoption in this form is based upon recent works,³ and is not referable to the ancient practice of taking *Kritrima* sons.

ADOPTION ACCORDING TO THE DATTA KA FORM.

An adopted son is a person capable of being adopted,⁴ who is given by a person competent to give,⁵ to a person competent to receive in adoption,⁶ and who has been so given and received in the way prescribed by Hindu law.⁷

Definition of adoption.

The adoption of a son is a matter of religious obligation to a childless Hindu, who has no prospect of procreating male issue,⁸ although it may generally happen that adoptions originate "in the ordinary human desire for perpetuation of family properties and names."⁹ It is said that originally the motives for adoption were secular, and that subsequently religious and secular motives were mixed.¹⁰ Among some castes the motive is purely secular.¹¹

Necessity for adoption.

As to the origin of the practice of adoption, see Sircar's "Law of Adoption," Lectures I., II. *Arundadi Ammal v. Kuppammal* (1867), 3 Mad. H. C. 283, at p. 284.

Except where custom has varied the law, Jains are governed in matters Jains.

¹ See *Yachereddy Chinna Bassava-pa v. Yachereddy Gowdapa* (1835), 5 W. R. P. C. 114.

² *Post*, pp. 151, 152.

³ *Post*, p. 152.

⁴ *Post*, pp. 132-144.

⁵ *Post*, pp. 129-132.

⁶ *Post*, pp. 99-128.

⁷ *Post*, pp. 144-149.

⁸ See *Sootroogun Sutputty v. Sabitra Dye* (1834), 2 Knapp, 287; 5 W. R. P. C. 109; *Rajendro Narain Lahoree v. Saroda Soonduree Dabee* (1871), 15 W. R. C. R. 548; *Saroda-soondery Dossee (S. M.) v. Tincaury Nundy* (1863), 1 Hyde, 223, at p. 249; *Huradhun Mookurjia v. Muthoranath*

Mookurjia (1849), 4 M. I. A. 414, at pp. 425, 426; 7 W. R. P. C. 71; *Raghnada (Sri) v. Brozo Kishoro (Sri)* (1876), 3 I. A. 154, at p. 177; 25 W. R. C. R. 291, at p. 295.

⁹ See *Gurulingaswami (Sri Balusu) v. Ramalakshammamma (Sri Balusu)*. *Radha Mohun v. Hardai Bibi* (1899), 28 I. A. 113, at p. 135; 22 Mad. 398, at p. 414; 21 All. 460, at p. 477; 3 C. W. N. 427, at p. 442; 1 Bom. L. R. 226.

¹⁰ See Sircar's "Law of Adoption," pp. 25, 42, 113, 142, 143.

¹¹ See *Bhala Nahana v. Parbhu Hari* (1877), 2 Bom. 67.

of adoption by the ordinary rules of Hindu law.¹ The *Dattaka* son is the only adopted son recognized by them.² but as they do not accept the Hindu doctrine as to the spiritual efficacy of sons, they are influenced only by secular considerations in adopting.³

Motive for adoption.

The motive for the adoption does not affect its validity.⁴

The fact that an adoption is made for the purpose of defeating an alienation will not affect its validity.⁵

As to the motives of a widow for an adoption, see *post*, p. 113.

Custom prohibiting adoption.

A family,⁶ or caste,⁷ custom prohibiting adoption is valid.

The burden of proving such custom lies on the person alleging its existence.⁸

Agreement not to adopt.

An agreement not to adopt would not apparently invalidate an adoption made in breach of it, but so far as property the subject of such agreement is concerned, it might bind the parties to it. It would not, under any circumstances, bind any one except the actual parties to it.⁹

So far as self-acquired property is concerned, or in cases to which the Bengal school of law is applicable, a father might by a valid gift over, in case of a contemplated adoption by his son, put pressure upon such son to prevent or control his adopting, but the adoption would not be invalidated thereby.¹⁰

¹ *Amava v. Mahadgauda* (1896), 22 Bom. 416, at p. 418; *Bhagvandas Tejmal v. Rajmal* (1873), 10 Bom. H. C. 241. See *Rup Chand (Lala) v. Jambu Parshad* (1910), 37 I. A. 93; 32 All. 247; 14 C. W. N. 545; 12 Bom. L. R. 402.

² See *Lakshmi Chand v. Gatto Bai* (1886), 8 All. 319, at p. 321.

³ See *Bhagvandas Tejmal v. Rajmal* (1873), 10 Bom. H. C. 241, at p. 263.

⁴ See *Rambhat v. Lakshman Chintaman Mayalay* (1881), 5 Bom. 630, at p. 635.

⁵ *Ibid.* See *Lakshmana Rau v. Lakshmi Ammal* (1881), 4 Mad. 160, at p. 165.

⁶ *Fanindra Deb Raikat v. Rajeswar Das* (1885), 12 I. A. 72; 11 Calc. 463; *Bishmath Singh (Rajah) v. Ram Churn Mujmoadar*, Ben. S. D. A. 1850, p. 20.

⁷ See *Vandrayan Jekisan (Patel) v. Mansil Chunilal (Patel)* (1891), 16 Bom. 470; *Verabhai Ajubhai v. Hi-*

raba (Bai) (1903), 30 I. A. 234; 27 Bom. 492; 7 C. W. N. 716; 5 Bom. L. R. 134.

⁸ *Verabhai Ajubhai v. Hiraba (Bai)* (1903), 30 I. A. 234; 27 Bom. 492; 7 C. W. N. 716; 5 Bom. L. R. 134.

⁹ *Surya Rao Bahadur (Sri Raja Rao Venkata Mahapat) v. Gangadhara Rama Rao Bahadur (Sri Raja Rao Venkata Mahapat)* (1886), 13 I. A. 97; 9 Mad. 499. Although this case was governed by the Mitakshara law, and under that law the son of one of the parties had acquired a right to the property by birth, the reason given for the decision that the effect of the terms of the arrangement would be to alter the law of descent would apply equally to a case governed by the Bengal school. See also *Rajender Dutt v. Sham Chund Mitter* (1880), 8 Calc. 108.

¹⁰ See *Hurrosondery (Ranee) v. Kistonaath Roy (Cowar)* (1841), Fulton, 393.

The fact that an adoption was made in breach of an agreement to adopt another boy, which was not carried out, does not render the adoption invalid.¹

A girl cannot be given or taken in adoption.²

Adoption of girl.

Among the Nambudri Brahmins on the west coast of India, there is in force a practice of giving a daughter in what is called *sarvasadhanam* marriage, in order that the son born of her should be affiliated as the son of the father giving her.³ He does not inherit in the family of his father so long as other sons exist.⁴

As to the adoption of daughters by dancing-girls, see *post*, p. 157.

WHO MAY TAKE IN ADOPTION.

A male Hindu who has not a legitimate⁵ or validly⁶ adopted⁷ son, son's son, or son's son's son in existence and capable of inheriting, may take a son in adoption, unless he be mentally incapable of understanding the nature of the act.⁸

The existence of any other descendant is not a bar to an adoption.⁹

¹ *Sihamedoo Runga Reddy v. Achummal* (1808), 2 Strange H. L. 115.

² *Gangabai v. Anant* (1888), 13 Bom. 690; *Nursingh Narain v. Bhuttun Loll*, W. R. 1864, p. 194, commenting (at p. 196) on *Nowab Bai v. Bugawuttee Koowar* (1835), 6 Ben. Sel. R. 5 (2nd ed. p. 4); "Vyavahara Mayukha," chap. iv. s. 5, para. 1; W. Macnaghten's "Hindu Law," vol. i. p. 102; Colebrooke's "Digest," vol. iii. p. 493. Nanda Pandita ("Dattaka Mimamsa," s. 7, paras. 1, 16, 17, 18-39) argues that daughters can be affiliated, but, as pointed out in Sircar's "Law of Adoption," pp. 144, 145, his views have not been accepted by Hindus.

³ See *Vasudevan v. Secretary of State* (1887), 11 Mad. 157, at pp. 162, 163.

⁴ *Kumaran v. Narayanan* (1886), 9 Mad. 269.

⁵ *Joy Chundro Raee v. Bhyrub Chundro Raee*, Ben. S. D. A. 1849, p. 461; *Rango Balaji v. Mudiyeppa* (1898), 23 Bom. 296, at p. 303; *Venkappa Bapu v. Jivaji Krishna* (1900), 25 Bom. 306, at p. 311; 2

Bom. L. R. 1101; "Dattaka Mimamsa," s. 1, para. 13; "Dattaka Chandrika," s. 1, para. 6.

⁶ An invalid adoption cannot influence the validity of a subsequent adoption, which would otherwise be legal, Sircar's "Law of Adoption," p. 189.

⁷ *Rungama v. Atchama* (1846), 4 M. I. A. 1 at p. 102; 7 W. R. P. C. 57, at p. 61; *Ramabai v. Raya* (1896), 22 Bom. 482; *Gopee Lall v. Chundraolec Buhoojee (Mussamat Sree)* (1872), I. A. Sup. vol. 131; 11 B. L. R. 391; 19 W. R. C. R. 12; *Mohesh Narain Moonshi v. Taruck Nath Moitha* (1892), 20 I. A. 30; 20 Calc. 487; *Sudanund Mohaputtur v. Bonomallee* (1863), Marsh. 317; 2 Hay, 205.

⁸ Strange's "Hindu Law," vol. i. p. 78; W. Macnaghten's "Hindu Law," vol. ii. p. 200; "Dattaka Mimamsa," s. 1, paras. 13, 14; "Dattaka Chandrika," s. 1, para. 6; Colebrooke's "Digest," vol. iii. pp. 295 *et seq.*

⁹ W. Macnaghten's "Hindu Law," vol. i. p. 66, note.

Apparently a Hindu who has given his only son in adoption can adopt a son.¹

Pregnancy of wife.

It is immaterial whether the adoptive father be hopeless of issue or not. The pregnancy of his wife does not, whether he be, or be not, ignorant of it, prevent a Hindu from adopting,² and the adoption is not invalidated by the child of which the wife of the adopter is pregnant at the time of the adoption turning out to be a male.³

Incapacity of son.

If the son be permanently incapable of performing religious rites by reason of congenital blindness, deafness, dumbness; impotency, lameness, virulent leprosy, insanity, idiocy, or from any other reason, which involves an incapacity to inherit,⁴ he may be treated for this purpose as non-existent.⁵

Where son has renounced worldly affairs.

There is authority that when a son absolutely renounces the world and all property, and enters a religious order, as by becoming a *sannyasi*, ascetic, or *fakir*, his existence is not an impediment to an adoption by his father.⁶

It has been suggested⁷ that this question may be effected by Act XXI. of 1850, but it is submitted that there is not in this case a question of a "forfeiture of rights or property," or impairing or affecting any right of inheritance "by reason of his renouncing, or having been excluded from the communion of any religion, or being deprived of caste."

Loss of caste, etc.

Where a son, natural or adopted, became an outcast, or renounced the Hindu religion, the Hindu law⁸ permitted an adoption, but the effect of Act XXI. of 1850 is to prevent the

¹ See *Gurulingaswami (Sri Balusu) v. Ramalakshwamma (Sri Balusu)*, *Radha Mohun v. Hardai Bibi* (1899), 22 I. A. 113, at p. 142; 22 Mad. 398, at p. 421; 21 All. 460, at p. 485; 3 C. W. N. 427, at p. 447; 1 Bom. L. R. 226.

² *Nagabhushanam v. Seshammagaru* (1881), 3 Mad. 180; *Daulat Ram v. Ram Lal* (1907), 29 All. 310.

³ *Hanmant Ramchandra v. Bhimacharya* (1887), 12 Bom. 105. As to the effect of the birth of a son after an adoption, see *post*, p. 180.

⁴ *Post*, pp. 354-358.

⁵ Strange's "Hindu Law," vol. i. p. 77; Sircar's "Law of Adoption," p. 196; Sutherland's "Synopsis," p. 212; W. Macnaghten's "Hindu Law,"

vol. i. p. 66 note; Rattigan on Adoption, p. 10.

⁶ Punjab Records, 1875, p. 144. This does not apply to modern Byragées who are not ascetics, *Teelut Chunder v. Shama Churn Prokash* (1864), 1 W. R. C. R. 209; *Jagan-nath Pal v. Bidyanund* (1868), 1 B. L. R. A. C. 114; 10 W. R. C. R. 172; *Khoodeeram Chatterjee v. Rookhnee Boistobee* (1871), 15 W. R. C. R. 197.

⁷ Sircar's "Law of Adoption," p. 196.

⁸ Sutherland's "Synopsis" (Stokes' edition), p. 664; W. Macnaghten's "Hindu Law," vol. ii. p. 200, note; Steele 42, 181; Strange's "Hindu Law," vol. i. p. 77.

natural or previously adopted son from being ousted from any of his legal rights.¹

When the question as to the validity of such an adoption shall arise, it may be that "the Courts would refuse to recognize an adoption which could confer no civil rights."² Except in the case of an after-born son, to which different considerations apply, the co-existence of a natural son possessing civil rights as such, and an adopted son, does not seem to be in accordance with Hindu law as laid down by the Courts. The difficulty in adjusting the respective rights would lead to great inconvenience, but, on the other hand, it seems hard upon a father that he should be unable to regain the religious benefits, which are lost to him by the conversion, or degradation of his son.

Mr. Mayne³ says "that the question might become of importance on the death of the natural son without issue," but the subsequent death of the son would not render the adoption valid.⁴

It is submitted that where a son has disappeared, and has Missing son. not been heard of for many years, an adoption, if made, is not valid unless, at the time when the adoption is in question, it be proved that such son was dead at the date of the adoption.⁵

An adoption, which is invalid on account of there being a Death of son. living son,* is not rendered valid by the death of that son.⁶

It has not been decided whether the assent of a natural or Consent of son. adopted son to a subsequent adoption can validate an adoption during the lifetime of such son.⁷ It is submitted that although

¹ As, for instance, where he is a coparcener in a joint family governed by the Mitakshara law. Also he would not lose a right to succeed to collaterals, even if his father had disinherited him.

² See Mayne's "Hindu Law," 7th ed., p. 137. See Sircar's "Law of Adoption," p. 197.

³ "Hindu Law," 7th ed., p. 137.

⁴ *Post*, note 6.

⁵ See *Rango Balaji v. Mudiyeppa* (1898), 23 Bom. 296, at p. 303. Although ss. 107 and 108 of the Indian Evidence Act (L. of 1872) fix rules as to the presumption of death at the time of dispute, there is no presumption as to the time of death, *Dharup Nath v. Gobind Saran* (1886), 8 All. 614, at p. 620. As to the rules of Hindu law with regard to the presumption of death, see *Jannajay Mazumdar v. Keshab Lal Ghose*

(1868), 2 B. L. R. A. C. 134; *Guru Das Nag v. Mahlal Nag* (1870), 6 B. L. R. App. 16; 14 W. R. C. R. 468; *Parmeshar Rai v. Bisheshar Singh* (1875), 1 All. 53; *Dharup Nath v. Gobind Saran* (1886), 8 All. 614; *Dhondo Bhikaji v. Ganesh Bhikaji* (1886), 11 Bom. 433; and Sircar's "Law of Adoption," pp. 194, 195.

⁶ *Basoo Camummah v. Basoo Chinna Vencatasa*, Mad. S. D. A. 1856, p. 20; Norton L. C., vol. i. p. 78; *Vera-prashya v. Santauraja*, Mad. S. D. A. 1860, p. 168; Norton L. C. vol. i. p. 78. This is disputed in Sircar's "Law of Adoption," p. 190, but it seems clear that an adoption, which was, at the time it was made, invalid, cannot be rendered valid by a subsequent event, see *post*, p. 150.

⁷ "Dattaka Mimansa," s. 1, para. 12, in explanation of the Védik story

a consenting son may be estopped from disputing the adoption, the status of an adopted son with its legal effects of inheritance, &c., cannot be conferred by such consent.

It is clear that it can only do so when such assent is completely free, and is given with a full knowledge of the circumstances.¹

In the "Dattaka Mimansa,"² it is said that a second son may be adopted³ with the sanction of the existing issue, and in *Rungama v. Atchama*⁴ this seems to have been accepted, although it became unnecessary to decide the question, but the Courts have not in any subsequent case upheld such adoption.

It is submitted that consent to the adoption would not prevent a son from disputing it,⁵ except where his conduct had amounted to an estoppel.⁶ Otherwise it would be difficult to adjust the respective rights of the legitimate and adopted son,⁷ except where an arrangement had been arrived at with regard to them. Sastri G. C. Sircar⁸ treats the judgment in *Rungama v. Atchama*⁹ as deciding that the consent of the son could render the adoption valid; but it has, it is submitted, no such effect.

Bachelor or
widower.

The fact that a man is a bachelor¹⁰ or a widower¹¹ does not prevent him from taking a son in adoption.

Adoption by
minor

Provided that he has attained the age of discretion, a minor¹² is not incapacitated, as such, from taking a son in adoption, or giving permission to adopt.¹³

of Sunahseptha Devarata's adoption by Visvamitra, who was already the father of a hundred sons, and whose adoption of another son was ratified by the fifty younger sons. "Vasis tha," xvii. 33-35 Sircar's "Law of Adoption," pp. 180, 181.

¹ See *Rungama v. Atchama* (1846), 4 M. I. A. 1, at pp. 102, 103; 7 W. R. (P. C.) 57, at pp. 61, 62; *Sudanund Mohapattur v. Bonomallee* (1863), Marsh 317, at pp. 321, 322; 2 Hay, 205.

² S. 1, para. 12.

³ See *ante*, p. 99.

⁴ (1846), 4 M. I. A. 1, at pp. 97, 103; 7 W. R. P. C. 57, at pp. 59, 62.

⁵ See *post*, p. 150.

⁶ *Post*, p. 166.

⁷ See *post*, p. 180.

⁸ "Law of Adoption," p. 180.

⁹ (1846), 4 M. I. A. 1, at p. 103; 7 W. R. (P. C.) 57, at p. 62.

¹⁰ *Gopal Anant v. Narayan Ganes* (1888), 12 Bom. 329. See *N. Chandrasekharudu v. N. Bramhanna* (1869), 4 Mad. H. C. 270, and *Gunnappa Desh-*

pandee v. Sunkapa (1839), Bom. Sel. R. 202; *Monemonthonath Dey v. Onouthnauth Dey* (1865), 2 Ind. Jur. (N. S.) 24, at p. 43.

¹¹ *Nagappa Udaya v. Subba Sastri* (1865), 2 Mad. H. C. 367; *N. Chandrasekharudu v. N. Bramhanna* (1869), 4 Mad. H. C. 270; *Tulshi Ram v. Behari Lal* (1889), 12 All. 328, at p. 352; *Monemonthonath Dey v. Onouthnauth Dey* (1865), 2 Ind. Jur. (N. S.) 24, at p. 43; *Gunnappa Deshpandee v. Sunkappa* (1839), Bom. Sel. Rep. 202.

¹² The Indian Majority Act (IX. of 1875) does not affect the capacity to adopt, s. 2.

¹³ *Rajendro Narain Lahoree v. Saroda Soonduree Dabee* (1871), 15 W. R. C. R. 548, approved of in *Jumona Dassya Chowdhram v. Bangasooderai Dassya Chowdhram* (1876), 3 I. A. 72, at pp. 83, 84; 1 Calc. 289, at pp. 295, 296; 25 W. R. C. R. 235, at p. 239; *Vandrayan Jekson Patel v. Manilal Chumilal Patel* (1890), 15 Bom. 565.

There does not appear to be any case in the Reports, in which there has been an adoption by a Hindu, who has not attained the age of majority according to Hindu law.

The cases on the subject deal with the capacity to give permission to adopt, but the reasons given in those cases would apply as much to the capacity to receive in adoption, as to the capacity to give permission to adopt. These cases refer to the "age of discretion," which apparently means the age at which a Hindu is competent to perform religious ceremonies,¹ but that age does not appear to be fixed.

Of the cases which are cited as authorities for the above proposition, in *Jumona Dassya Chowdhurani v. Bamasoonderei Dassya Chowdhurani*,² the person giving the power had attained the age of majority according to the law to which he is subject³; in *Patel Vandhravan Jekisan v. Patel Manilal Chunilal*,⁴ it was held that permission could be given by a person who was within two months of arriving at the age of majority; and in *Rajendro Narain Lahoree v. Saroda Soonduree Debia*,⁵ the report does not specify the age, but the boy had apparently not completed his fifteenth year, as he was described as a minor.

In considering this question it may be remembered that a minor governed by the Mitakshara school would by adoption be acting to his temporal disadvantage, as he would thereby introduce a new coparcener into the family.⁶

It may be that the age depends upon individual capacity, but such a conclusion would, if possible, be avoided, as it would make the title of the adopted son depend upon an uncertain foundation.

Sastri G. C. Sircar argues that an adoption by a minor is inconsistent with Hindu ideas.⁷ He points out that no case of adoption by a minor has as yet arisen.⁸ It is very unlikely that the question as to an adoption by a minor would arise. His capacity to give a power of adoption may stand on a different footing, as such power would be for his spiritual benefit, and may become necessary when he is on his deathbed.

In a case governed by the Maharashtra school there seems no reason why the authority of the husband should not be implied, whatever was his age at the time of his death;⁹ and in a case governed by the Dravida school the authority of the *sapindas* to authorize an adoption would not apparently be affected by the age of the husband at the time of his death.

The Hindu Wills Act¹⁰ provides rules for the execution of wills to which the Act is applicable, and in such cases prevents a minor from disposing of his property by will,¹¹ but as section 3 of the Act declares that nothing

Hindu Wills Act.

¹ *Rajendro Narain Lahoree v. Saroda Soonduree Debia* (1871), 15 W. R. C. R. 548.

² (1876), 3 I. A. 72; 1 Calo. 289; 25 W. R. C. R. 235.

³ This case was governed by the Bengal School of Law.

⁴ (1890), 15 Bom. 565, at p. 576.

⁵ (1871), 15 W. R. C. R. 548.

⁶ As to the religious advantage, see *Rajendro Narain Lahoree v. Saroda Soonduree Debia* (1871), 15 W. R.

C. R. 548, and ante, p. 97.

⁷ "Law of Adoption," pp. 107-212.

⁸ P. 212.

⁹ See *Patel Vandhravan Jekisan v. Patel Manilal Chunilal* (1890), 15 Bom. 565, at p. 576.

¹⁰ XXI. of 1870.

¹¹ S. 46 of Act X. of 1865 applied by s. 2 of Act XXI. of 1870 to such Hindu wills as are affected by the latter Act.

therein contained shall affect any law of adoption, the question as to the capacity of a minor to give authority to adopt is apparently untouched by that Act.¹

Non-testa-
mentary per-
mission.

It seems now to be impossible for a minor to execute a valid non-testamentary document conferring an authority to adopt, as a registering officer is required to refuse to register a document executed by a person who appears to him to be a minor.² The Legislature has not provided for the case of a verbal permission given by a minor.

Ward of
Bengal Court
of Wards.

No adoption by a ward of the Bengal Court of Wards, or of the Court of Wards of Eastern Bengal and Assam,³ and no written or verbal permission to adopt given by any ward is valid without the consent of the Lieutenant-Governor, obtained either previously or subsequently to such adoption, or to the giving of such permission on application made to him through the Court of Wards.⁴

Even if the necessary consent be given, a ward of a Court of Wards cannot adopt or give permission to adopt unless he be otherwise competent to do so.⁵

Madras Court
of Wards.

A ward of the Madras Court of Wards cannot adopt or give a written or verbal permission to adopt without the consent of the Court of Wards.⁶

Ward of Court
of Wards of
Central Pro-
vinces.

No adoption by a ward of the Court of Wards of the Central Provinces, and no written or verbal permission to adopt given by such ward, is valid without the consent of the Chief Commissioner, obtained either previously or subsequently to the adoption, or to the giving of the permission, on application made to him through the Court of Wards.⁷

Ward of Court
of Wards of
United Pro-
vinces.

A ward of the Court of Wards of the United Provinces

¹ Sastri G. C. Sircar is of a different opinion ("Law of Adoption," p. 236), but if his view is correct, it follows, as he points out, "that an authority to adopt given by a minor to be valid must be given in words and not in writing."

² Act XVI. of 1908, s. 35. An opinion to the contrary effect seems to have been given by the Legal Remembrancer of Bengal (see 12 C. W. N. cxxxviii.), but it is submitted that the words of the Act are clear. See s. 17.

³ Act IX. (B. C.) of 1879, s. 61.

⁴ Act VII. of 1905, s. 3, read with

Act IX. (B. C.) of 1879, s. 61.

⁵ For example, he cannot adopt unless he has arrived at the age of discretion, *ante*, p. 103.

⁶ Act I. (M. C.) of 1902, s. 34 (c). As to the law before the passing of that Act, see Mad. Reg. V. of 1804, s. 25, which only deals with adoption by a ward. See *Jumona Dasyya Chowdhrani v. Bamasoondarai Dasyya Chowdhrani* (1876), 3 I. A. 72, at p. 83; 1 Calc. 289, at p. 295; 25 W. R. C. R. 235, at p. 239.

⁷ Act XVII. of 1885, s. 24.

cannot adopt, or give a written or verbal permission to adopt; without the consent of the Court of Wards, provided that the Court of Wards shall not withhold its consent if the adoption is not contrary to the personal or special law applicable to the ward, and does not appear likely to cause pecuniary embarrassment to the property, or to lower the influence or respectability of the family in public estimation. This restriction has no application to a proprietor who has applied to have his property placed under the superintendence of the Court of Wards.¹

In the Punjab no ward can without previous sanction in writing of the Court of Wards adopt or give permission to adopt.²

There is no provision with regard to adoption in the Acts relating to Courts of Wards in Bombay³ and Ajmere.⁴

Courts of Wards in Bombay and Ajmere.

It is submitted that, at any rate in the case of Sudras,⁵ a person who is disqualified from inheriting by reason of a personal disability, such as congenital blindness, impotence, or lameness,⁶ can nevertheless take a son in adoption.⁷

Right of person disqualified from inheritance.

Sastri G. C. Sircar⁸ says that Colebrooke's English translation of a passage⁹ in the "Mitakshara" is the only authority for denying to persons excluded from inheritance the right to adopt, and he gives a translation which has not such effect. The "Dattaka Chandrika" recognizes the right,¹⁰ and the same view was taken by Sutherland.¹¹

Change of religion, or degradation from caste, does not *per se* interfere with the capacity to take in adoption.¹²

Change of religion and degradation.

Where a man not only renounces Hinduism, but also adopts another system of religion with a personal law attached to it, such as Mohammedanism, he loses a right which is alien to the system adopted by him.¹³

It is difficult to see how a Hindu who has become a Christian, can take a dattaka son. The boy would not inherit, as the Indian Succession Act (XX. of 1865) does not provide for an adopted son. Moreover, the religious

¹ Act III. (N. W. P.) of 1899, s. 34.

² Act II. (Punj. C.) of 1903, s. 15.

³ Act I. (Bo. C.) of 1905.

⁴ Reg. I. of 1888.

⁵ In their case no religious ceremonies are necessary, *post*, p. 145.

⁶ *Post*, pp. 354-358.

⁷ See Mayne's "Hindu Law," 7th ed., pp. 138, 139, 811; Sircar's "Law of Adoption," pp. 202, 203, 419; "Punjab Customary Law," vol. ii. p. 174.

⁸ Sircar's "Law of Adoption," p. 202.

⁹ Chap. II. s. 10, para. 11.

¹⁰ S. 6, paras. 1-2. According to the "Dattaka Chandrika" (s. 6, para. 1), the son has a right of maintenance. This is disputed by G. C. Sircar, "Law of Adoption," p. 419.

¹¹ "Synopsis," 664, 671. See W. Macnaghten, i. p. 66, note.

¹² Act XXI. of 1860.

¹³ *Macbai (Bai) v. Hirbai (Bai)* (1911), 35 Bom. 264. See *ante*, p. 20.

elements of the adoption would be wanting. Clearly a twice-born Hindu cannot adopt, after becoming a Christian, as he would be incapable of performing the necessary religious ceremonies.

Impurity
arising from
bodily state.

In the case of members of the twice-born classes, a person suffering from virulent leprosy, and possibly one suffering from any other incurable disease,¹ would apparently be incompetent to take in adoption,² at any rate until he had performed expiation according to the Shastras.³ In less serious cases of leprosy, it seems clear that there is no objection to adoption, at any rate after expiation.⁴ In the case of Sudras, leprosy can be no disqualification for taking in adoption.⁵

Ceremonial
impurity.

In the case of Sudras, as no religious ceremonies are necessary,⁶ an adoption by a person who is in a state of ceremonial impurity from the death or birth of a relation is not on that account invalid.⁷

It is not settled whether among the twice-born classes a person can adopt when he is in a state of impurity arising from the death or birth of a relation,⁸ and has not performed the necessary expiation.

This question is not one of great importance, as a person in a state of impurity would be unlikely himself to perform ceremonies which would be of no religious efficacy. He is apparently competent to perform such ceremonies vicariously,⁹ and if they are performed the Court will uphold

¹ "Dayabhaga," chap. v. paras. 7, 10-13. It would, however, be unlikely that Courts would extend the grounds for exclusion from inheritance beyond the decided cases.

² See Sircar's "Law of Adoption," p. 206. In *Bhagaban Ramanuj Das (Mohunt) v. Roghunundun Ramanuj Das (Mohunt)* (1895), 22 I. A. 94, at p. 105, 22 Calc. 843, at p. 858, the Judicial Committee say, "In order to disqualify from making an adoption the leprosy must be of a virulent form." Their lordships in that case were dealing with an appointment by a mohunt of a chela to succeed him, and not with an adoption in the ordinary sense. In all the Courts it seems to have been assumed that incurable leprosy would prevent such appointment.

³ See *Bhoobunessuree Debia v. Gaurres Doss Turkopanchanun* (1869),

11 W. R. C. R. 535; 2 W. Macn 201, 202. As to the power to delegate the performance of ceremonies, see cases, *post*, p. 149, note 9.

⁴ W. Macnaghten's "Hindu Law," vol. ii. pp. 102, 202.

⁵ *Sukumari Bewa v. Ananta Malia* (1900), 28 Calc. 168.

⁶ *Post*, p. 147.

⁷ *Thangathanni v. Ramu Mudali* (1882), 5 Mad. 358.

⁸ In *Ramalinga Pillai v. Sadasiva Pillai* (1864), 9 M. I. A. 510; 1 W. R. (P. C.) 25, it was assumed that a person who at the time of the adoption was impure in consequence of the death of a relative could not adopt. See *Ranganayakamma v. Alwar Setti* (1889), 13 Mad. 214, where the question was as to the adopting widow's power to adopt. Strange's "Manjal," 63, 2nd ed., p. 18.

⁹ Sircar's "Law of Adoption," p.

the adoption.¹ There seems no doubt that ceremonial impurity can be removed by expiation. The Courts would probably be disinclined to give effect to a disability which can be cured by expiation.²

In *Lakshmibai v. Ramchandra* ³ it was said, "There is thus admittedly no authoritative Smriti text on the point, and whatever the efficacy of ceremonial strictness may be, the Courts which administer the law in British India must be guided by what is the received practice and custom of the country or the class to which the parties belong."

The fact that the adoptive father is ceremonially impure does not prevent his receiving in adoption, and he can postpone the religious ceremonies until the pollution has been removed.⁴

It has been held that a professed ascetic cannot take in ^{Adoption by ascetic.} adoption.⁵

Although the Hindu codes did not contemplate an adoption by a person, who had renounced the world for the sake of religion, there seems now, having regard to the provisions of Act XXI. of 1850, nothing to prevent a person from emancipating himself from a religious order and taking a son in adoption.⁶

A husband does not require the assent of his wife to his ^{Assent of wife unnecessary.} taking a son in adoption. He may adopt in spite of her express dissent.⁷ A wife may, however, join in an adoption by her husband.

There is said to be a practice in Bengal by which a man adopts a son in conjunction with more than one wife.⁸ There seems to be no legal objection to this practice, but a question may arise as to whether the son inherits to the relations of the wives concurring in the adoption.⁹

A woman cannot take a child to herself in adoption.¹⁰ ^{Adoption by woman.}

213. See *Lakshmibai v. Ramchandra* (1896), 22 Bom. 590; *Jamnabai v. Raychand Nahalchand* (1883), 7 Bom. 225; *Vijiarangam v. Lakshman* (1871), 8 Bom. H. C. R. O. C. 244

¹ *Ravji Vinayakrav Jaggannath Shankarsett v. Lakshmibai* (1887), 11 Bom. 381, at p. 395.

² *Post*, p. 356.

³ (1896), 22 Bom. 590, at p. 595.

⁴ *Santappayya v. Rangappayya* (1894), 18 Mad. 397, at pp. 398, 399.

⁵ "Punjab Records," 1874, p. 83.

⁶ In *Mhalsabai v. Vithoba Khandappa Gulve* (1882), 7 Bom. H. C. App. xxvi., it was held that there is nothing in the Hindu law books to show that a Vaisya who has undergone the ceremony of *Vibhuti Vidda* (a ceremony indicating renunciation of

worldly affairs, analogous to "retirement to a forest," in ancient law, Sircar's "Law of Adoption," p. 201) is incapable of adopting a son.

⁷ See *Alank Manjari v. Fakir Chand Sakar* (1834), 5 Ben. Sel. R. 356 (new edition, 418); "Dattaka Mimansa," s. 1, para. 22.

⁸ See Sircar's "Law of Adoption," pp. 183, 184.

⁹ See *post*, p. 175.

¹⁰ *Choudry Pudum Singh v. Koer Oodey Singh* (1869), 12 M. L. A. 350; 2 B. L. R. (P. C.) 101; 12 W. R. (P. C.) 1; *Narendra Nath Bairagi v. Dina Nath Das* (1909), 36 Cal. 824. In *Peria Ammani v. Krishnasami* (1892), 16 Mad. 182, at p. 194. Best, J., expressed the opinion that a Jain widow who succeeded absolutely

If she goes through the form of doing so, the boy acquires no rights thereby, either in her property or in that of her husband.

A woman can, if she is governed by the Mithila school of law, take to herself a son according to the *Kritrima* form of adoption.¹

As to adoption of daughters by dancing girls and prostitutes, see *post*, p. 157.

PERMISSION TO WIFE OR WIDOW TO ADOPT.

Permission to wife to adopt.

A Hindu, who is capable of taking a son in adoption, can give to his wife power to adopt a son, or sons in succession,² to him, to be exercised either during his lifetime,³ or (except he be governed by the Mithila school of law⁴) after his death.⁵

Existence of son, etc.

"A man cannot delegate to others, to be exercised after his death, any greater power than he himself possessed in his lifetime."⁶

The existence of a son, grandson, or great-grandson, who is not permanently incapacitated from performing religious rites,⁷ does not of itself invalidate a power, but it prevents the exercise of the power, which remains in suspense.⁸

Permission given by person disqualified from adopting.

It is said that when a person is by reason of impurity arising from his bodily state, such as from virulent leprosy, disqualified from adopting,⁹ he can nevertheless give to his widow a permission to adopt.¹⁰

Adoption only by adoptive father or mother.

Under no circumstances can a son be adopted by any one except the man to whom he is adopted, or his widow.¹¹

to her husband's property, could adopt a son to herself, but such expression of opinion was unnecessary for the decision of the case. An interesting discussion as to the capacity of women to adopt is to be found in Sircar's "Law of Adoption," pp. 216-226.

¹ *Post*, pp. 151-154.

² *Sham Chunder v. Narayn Dibe* (1807), 1 Ben. Sel. R. 209 (new edition, 279). For other instances, see *Jumona Dassya Chowdhrahi v. Bamasundari Dassya Chowdhrahi* (1876), 3 I. A. 72; 1 Cal. 289; *Bhoobun Moyee Debia v. Ram Kishore Acharj Chowdhry* (1865), 10 M. I. A. 279; 3 W. R. P. C. 15; *Ram Soondur Singh v. Surbanee Dossee* (1874), 22 W. R. C. R. 121. As to whether in the absence of a special power sons can be adopted in succession, see *post*, pp. 123, 124.

³ She cannot adopt a son to him during his lifetime without his

authority. *Narayan Babaji v. Nana Manohar* (1870), 7 Bom. H. C. A. C. 153.

⁴ *Post*, p. 121.

⁵ *Chowdhry Pudum Singh v. Koer Oodey Singh* (1869), 12 M. I. A. 350; 2 B. L. R. (P. C.) 101; 12 W. R. (P. C.) 1; *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narasayya* (1876), 4 I. A. 1, at p. 9; 1 Mad. 174, at p. 186; *Mutsaddi Lal v. Kundan Lal* (1906), 33 I. A. 55; 28 All. 377; 8 Bom. L. R. 371; and cases, *post*, pp. 109, 114.

⁶ *Gopee Lall v. Chundraoolee Bhoojee (Mussamat Sree)* (1872), 1 A. Sup. vol. 131, at p. 133; 11 B. L. R. 391, at p. 394; 19 W. R. C. R. 12, at p. 13.

⁷ *Ante*, p. 99.

⁸ *Post*, p. 127.

⁹ See *ante*, p. 106.

¹⁰ Sircar's "Law of Adoption," p. 206.

¹¹ *Anrita Lal Dutt v. Surnomoye*

Power to adopt can be given to the wife alone, and to no one else.¹ The inclusion of other persons in the power vitiates it²; but the donor of the power may express his desire that in the exercise of the power the wife should consult any named person,³ and he may make the exercise of the power contingent upon the consent of other persons.⁴

The authority need not be in any particular form. It may be in writing, or (except in a case to which the Oudh Estates Act, 1869,⁵ applies) it may be oral.⁶

If the authority is contained in a will to which the Hindu Wills Act⁷ applies, such will must be executed in accordance with the formalities required by that Act.⁸

If the instrument giving the authority is not of a testamentary character, Stamp. it must, if executed after the 1st January, 1870, be engrossed on a stamped paper of ten rupees,⁹ and if executed after the 1st of January, 1872, it must be registered.¹⁰

In cases to which the Oudh Estates Act, 1869,⁵ applies, the power must be in writing,¹¹ but need not be registered.¹²

Das (1900), 27 I. A. 128, at p. 134; 27 Calc. 996, at p. 1002; 4 C. W. N. 549, at p. 551; 2 Bom. L. R. 446; *Lakshmi Bai v. Ramchandra* (1896), 22 Bom. 590, at p. 593; *Karsandas Natha v. Laddkavahu* (1887), 12 Bom. 185, at p. 199; *Bhagvandas Tejmal v. Rajmal* (1873), 10 Bom. H. C. 241, at p. 257; Strange's "Hindu Law," vol. II. pp. 93, 94.

¹ *Amrito Lal Dutt v. Surnomoy Das* (1900), 27 I. A. 128, at p. 134; 27 Calc. 996, at p. 1002; 4 C. W. N. 549, at p. 551; 2 Bom. L. R. 446; *Karsandas Natha v. Laddkavahu* (1887), 12 Bom. 185, at p. 199; *Bhagvandas Tejmal v. Rajmal* (1873), 10 Bom. H. C. 241.

² *Amrito Lal Dutt v. Surnomoy Das* (1900), 27 I. A. 128; 27 Calc. 996; 4 C. W. N. 549; 2 Bom. L. R. 446.

³ See *Surendra Nandan Das v. Sailaju Kant Das Mahapatra* (1891), Calc. 385.

⁴ *Beem Churn Sen v. Heeraloll Seal* (1867), 2 Ind. Jur. N. S. 225. See *Amrito Lal Dutt v. Surnomoy Das* (1900), 27 I. A. 128, at p. 135; 27 Calc. 996, at p. 1002; 4 C. W. N. 549, at p. 551.

⁵ I. of 1869.

⁶ *Soondur Koomaree Debia v. Gudadhur Pershad Tewaree* (1858), 7 M. I. A. 54, at p. 64; 4 W. R. (P. C.) 116, at p. 119; *Mutsaddi Lal v. Kundan Lal* (1906), 33 I. A. 55; 28 All. 377; 8 Bom. L. R. 371.

⁷ XXI. of 1870.

⁸ S. 50 of Act X. of 1865, applied by Act XXI. of 1870, s. 2, to such wills as are subject to the latter Act.

⁹ By Act II. of 1899, Sched. I., art. 3, an adoption deed, that is to say, any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt requires a stamp of ten rupees. There are similar provisions in Act I. of 1879, Sched. I. art. 38, and Act XVIII. of 1869, Sched. II. art. 31.

¹⁰ Act XVI. of 1908, s. 17. As to whether in the absence of registration evidence may be given as to the grant of the power, *see Somasundaram Mudaly v. Duraisami Mudaliar* (1903), 27 Mad. 30.

¹¹ S. 22 (8).

¹² *Bhaiya Rabidat Singh v. Indar Kunwar (Maharani)* (1888), 16 I. A. 53; 16 Calc. 558.

Revocation of power.

A power of adoption may be revoked, either expressly or by implication.

An example of a revocation by implication would be where, after giving the power, the man himself takes a son in adoption.¹

The mere birth of a son would not necessarily imply a revocation, but it might, taken with other circumstances, have such effect.²

Hindu Wills Act.

Where the power is contained in a will, to which the Hindu Wills Act³ applies, it cannot "be revoked otherwise than by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is required to be executed,⁴ or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same."⁵

Where the power is contained in a will, which is not subject to the Hindu Wills Act, the revocation can be effected by parol.⁶

Several widows.

When a power to adopt is given to one of several widows, such widow can adopt without reference to the other widow or widows,⁷ and she alone can exercise the power.⁸

When power is given to the widows jointly, it cannot be acted upon by one of them singly, except on the death of her co-wife.⁹

Where the permission is given to all of the widows severally, the elder widow, and on her refusal the younger widow can adopt.¹⁰

¹ See *Goutreppershaud Rai v. Jy-mala (Musunmau)* (1814), 2 Ben. Sel. R. 136 (new edition, p. 174).

² See *Gungaram Bhaduree v. Kasseekaunt Roy* (1813), 2 Ben. Sel. R. 44 (new edition, p. 56).

³ XXI. of 1870.

⁴ Act X. of 1865, s. 50, applied by Act XXI. of 1870, s. 2, to such wills as are subject to the latter Act.

⁵ Act X. of 1865, s. 57, applied to Hindu wills by Act XXI. of 1870, s. 2.

⁶ *Pertab Narain Singh (Maharajah) v. Subhao Koer (Maharane)* (1877), 4 I. A. 228; 3 Calc. 626; 1 C. L. R. 113. In that case a verbal authority given by a Hindu testator for the destruction of a will, although the will was not in fact destroyed, was held to constitute a revocation of the will.

⁷ Colebrooke's remarks in *Chellummal v. Munummal* (1803); Strange's "Hindu Law," vol. ii. p. 91.

⁸ Mayne's "Hindu Law," 7th ed., pp. 151, 152. An authority given to the "*Maharani Sahiba*," to adopt was held to give power to the elder widow alone. *Indar Kunwar (Maharani) v. Jaipal Kunwar (Maharani)* (1888), 15 I. A. 127; 15 Calc. 725.

⁹ See *Venkata Narasimha Appa Row (Sri Rajah) v. Rangayya Appa Row (Sri Rajah)* (1905), 29 Mad. 437, at p. 444. Sir F. Macnaghten ("Considerations," p. 171) considered that there cannot be a joint acceptance, but as it is possible in Western India when no permission has been given (*post*, p. 121), there seems no reason why it should not be possible when permission has been given.

¹⁰ *Ranjit Lal Karmakar v. Bijoy Krishna Karmakar* (1912), 16 C. W. N. 440; *Mondakini Dasi v. Adinath Dey* (1890), 18 Calc. 69. In *Luckinara Tagore's case*, F. Macnaghten's "Considerations," p. 172, Sircar's

Where the authority contemplates simultaneous adoption by the several widows,¹ or that there should be two adopted sons living at the same time, the power is incapable of being exercised at all.

The permission may be absolute, or its exercise may be contingent upon certain events,² or may be subject to lawful conditions, or may be subject to restrictions as to the boy to be adopted, or otherwise.

Permission absolute, contingent, conditional, or restricted.

The exercise of the power may be contingent upon the consent of persons named by the husband,³ and if such consent cannot be obtained the authority cannot be exercised.⁴

Contingent on consent of others.

A direction to a wife "to adopt a son with the good advice and opinion of the manager," does not make the adoption contingent on the consent of the manager.⁵

In some cases the contingency which is expressed is one that is implied by the law, as, for instance, a man gives to his wife a power to adopt in case his son dies under age and unmarried.⁶

Implied condition expressed.

There is authority that where the power of adoption requires as a condition of its being exercised that particular arrangements should be made with regard to the property, as, for instance, that particular property should be devoted to a charity, effect must be given to such condition.⁷

Condition as to property.

"Vyavastha Darpana," 2nd ed., 842, the claim of the eldest widow was upheld by the Court. For an instance of a power given to the elder widow to adopt three sons successively and thereafter to the younger widow to adopt, see *Akhoy Chunder Bagchi v. Kallapahar Haji* (1885), 12 I. A. 198; 12 Calc. 406.

¹ *Surendra Keshav Roy v. Doorga-sundari Dassee* (1892), 19 I. A. 108; 19 Calc. 513; *Akhoy Chunder Bagchi v. Kallapahar Haji* (1885), 12 I. A. 198; 12 Calc. 406, but the Court will, if possible, give to the document a construction which will make a lawful adoption possible.

² A condition subsequent, i.e. providing that in a certain event the adoption is to become void, would not affect an adoption which has been made.

³ *Beem Churn Sen v. Heeraloll Seal* (1867), 2 Ind. Jur. N. S. 225. See *Amrito Lal Dutt v. Surnomoye Dasi* (1900), 27 I. A. 128, at p. 135; 27 Calc. 996, at p. 1002; 4 C. W. N. 549, at p. 551.

⁴ See *Beem Churn Sen v. Heeraloll Seal* (1867), 2 Ind. Jur. N. S. 225; *Amrithayyan v. Ketharamayyan* (1890), 14 Mad. 65, at p. 70; *Tarachurn Chatterjee v. Suresh Chunder Mookerji* (1889), 16 I. A. 166, judgment of High Court, at p. 167; *Amrito Lal Dutt v. Surnomoye Dasi* (1900), 27 I. A. 128, at p. 134; 27 Calc. 996, at p. 1002; 4 C. W. N. 549, at p. 551; 2 Bom. L. R. 446.

⁵ *Surendra Nandan Das v. Sailaja Kant Das Mahapatra* (1891), 18 Calc. 385.

⁶ *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1, at p. 9; 1 Mad. 174, at p. 186; 26 W. R. C. R. 21, at p. 22. See *Bykant Monee Roy v. Kisto Soonderec Roy* (1867), 7 W. R. C. R. 392; *Solukhna (Mussummaut) v. Ramdolal Pande* (1811), 1 Ben. Sel. R. 324 (new edition, 434).

⁷ *Ganapati Ayyan v. Savithri Ammal* (1897), 21 Mad. 10. As to the power of the adoptive father to restrict the adopted son's rights in ancestral property, see *post*, p. 178.

Failure of disposition.

The failure of a disposition as to property in a will does not necessarily affect a power of adoption.¹

Failure of contingency.

Where the contingency, upon the happening of which the power is to be exercised, does not occur, the power cannot be exercised.

For instance, A, leaving his wife pregnant, makes a will giving her authority to adopt "in case the son to be born shall die." The widow is delivered of a daughter. The power cannot be exercised.²

Invalid contingency.

Where the exercise of the power is contingent upon circumstances, which involve an invalid adoption, or is contingent upon illegal, or immoral, or impossible conditions, the power cannot be exercised.

In a case where the power was only to be exercised in case of the disagreement of the wife and son, the power was held to be invalid.³

Strict construction.

A permission to adopt must be strictly construed,⁴ but a possible construction which would render the power valid should be preferred.⁵ If the permission be acted upon it must be strictly followed.⁶

As to successive adoptions, see *post*, pp. 123, 124.

If the strict exercise of the power would involve an invalid adoption, then no effect can be given to the power, as, for example, where the donor of the power directs the simultaneous adoption of more than one child,⁷ or the adoption of a boy during the lifetime of a living son.⁸

¹ *Bachoo Hurkisondas v. Mankorebar* (1907), 34 I. A. 107; 31 Bom. 373; 11 C. W. N. 769; 9 Bom. L. R. 646.

² *Mohendrololl Mookerjee v. Rookiney Dabee* (1864), Coryton, 42. Probably the Court would now give a more liberal construction to a provision of this kind, see *post*, p. 124.

³ *Solukhna (Mussumaut) v. Ramdjal Pande* (1811), 1 Ben. Sel. R. 324 (new edition, 434).

⁴ *Mohendrololl Mookerjee v. Rookiney Dabee* (1864), Coryton, 42. This, and other cases, which lay down the rule that powers of adoption are to be strictly construed are criticized in Sircar's "Law of Adoption," p. 235, where it is advocated that a liberal construction should be given to powers of adoption.

⁵ See *Akhoy Chunder Bagchi v. Kalapahar Hajji* (1885), 12 J. A. 198; 12 Calc. 406.

⁶ *Choudhry Pudum Singh v. Koer Oodey Singh* (1869), 12 M. I. A. 350,

at p. 356; 12 W. R. (P. C.) 1, at p. 2, where their lordships say, "Of course such a power must be strictly pursued." (In the report of the same case in 2 B. L. R. (P. C.) 101, at p. 104, the words are reported as, "Of course such authority must be strictly proved.") See *Amrito Lal Dutt v. Surnomoye Das* (1900), 27 I. A. 128; 27 Calc. 996; 4 C. W. N. 549; 2 Bom. L. R. 446; *Mutsaddi Lal v. Kundan Lal* (1906), 33 I. A. 55; 28 All. 377; 8 Bom. L. R. 371.

⁷ *Surendra Keshav Roy v. Doorgasundari Dassee* (1892), 19 I. A. 108; 19 Calc. 513. See *Akhoy Chunder Bagchi v. Kalapahar Hajji* (1885), 12 I. A. 198; 12 Calc. 406. S. C. in Court below, *Gyanendrg Chunder Lahiri v. Kallapahar Hajee* (1882), 9 Calc. 50; 11 C. L. R. 297; *Choundawalee Bahoojee (Gosween Sree) v. Girhareejee* (1868), 3 Agra, 226.

⁸ In this case the adoption cannot be made even after the death of the

Where the husband has specified the boy to be adopted, ^{Specification of boy.} or the class out of which a boy is to be adopted,¹ his direction must be followed. It is not settled whether if a specified boy be unavailable, another boy can be adopted.²

In Bombay an authority to adopt a specified boy would not, at any rate in the case of that boy being unavailable, prevent an adoption of another boy, unless the husband has expressly forbidden the adoption of any other boy.³ In an old case⁴ a similar rule was applied in Madras, but in a recent case⁵ a different view was entertained. It is submitted that except in a case governed by the Maharashtra school of law, an authority to adopt a specified boy cannot be exercised with respect to any other boy. The above-named school permits an adoption by the widow without the express consent of her husband,⁶ and will not imply a prohibition to adopt a boy other than the named boy.

Where the adoption is otherwise valid, a discussion as to the ^{Motive of widow.} motive of the widow for adopting is immaterial.⁷

ADOPTION BY WIDOW.

There is a difference of opinion between the schools as to the power of a widow to adopt a son.

living son. *Joychundro Rree v. Bhyruchundro Rree*, Ben. S. D. A. 1849, p. 461; *Solukhna (Mussummaut) v. Ramdola Pande* (1811), 1 Ben. Sol. R. 324 (new edition, 434).

¹ *Amirthayyan v. Ketharamayyan* (1890), 14 Mad. 65.

² *Mohendrololl Mookerjee v. Rookiney Dabee* (1864), Coryton, 42, at p. 46; *Amirthayyan v. Ketharamayyan* (1890), 14 Mad. 65. *Contrá* opinion of Bengal pundits in *Veerapermall Pillay v. Narain Pillay* (1801), 1 Mad. N. C. 78, at p. 98.

³ See *Lakshmi Bai v. Rajaji* (1897), 22 Bom. 996, approving of the following passage in West and Bühler, vol. ii. p. 965, "It is common for a husband authorizing an adoption to specify the child he wishes to be taken. Should that child die, or be refused by his parents, the authority would still be held, at least, in Bombay, to warrant the adoption of another child, unless, indeed, he had said 'such a child and no other.' The presumption is that he desired an adoption, and by specifying the object merely indicated a preference." See

Ramchandra Baji v. Bapu Khandu, Bom. P. J. 1877, p. 42.

⁴ *Veerapermall Pillay v. Narain Pillay* (1801), 1 Mad. N. C. 78.

⁵ *Amirthayyan v. Ketharamayyan* (1890), 14 Mad. 65. See *Suryanarayana v. Venkataramana* (1903), 26 Mad. 681, at p. 685.

⁶ *Post*, p. 119.

⁷ *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1, at p. 14; 1 Mad. 174, at pp. 190, 191; 26 W. R. C. R. 21, at p. 26; *Ramchandra Bhagavan v. Mulji Nanabhvi* (1896), 22 Bom. 558. This was a decision of a full bench of the Bombay High Court. The following were previously reported decisions on the same question: *Bhimawa v. Sangawa* (1896), 22 Bom. 206; *Mahabaleswar Fonda v. Durgabai* (1896), 22 Bom. 199; *Vithoba v. Bapu* (1890), 15 Bom. 110; *Patel Vundhavan Jekisan v. Patel Manslal Chunilal* (1890), 15 Bom. 565; *Rupchand Hindumal v. Rakhmabai* (1871), 8 Bom. H. C. A. C. 114; *Rakhmabai v. Radhabai* (1898), 5 Bom. H. C. A. C. 181.

Origin of
differences be-
tween schools.

The difference of doctrine of the several schools of law arises from the interpretations put by the schools upon a text of *Vasishtha*.¹ As to this, the Judicial Committee said, in *Collector of Madura v. Mootoo Ramalinga Sathupathy*,² "All the schools accept as authoritative the text of *Vasishtha*, which says, 'Nor let a woman give or accept a son unless with the assent of her lord.' But the *Mithila* school apparently takes this to mean that the assent of the husband must be given at the time of the adoption, and, therefore, that a widow cannot receive a son in adoption, according to the *Dattaka* form, at all. The Bengal school interprets the text as requiring an express permission given by the husband in his lifetime, but capable of taking effect after his death; whilst the *Mutyookhu* and *Koosthubha* treatises which govern the *Mahratta* school explain the text away by saying that it applies only to an adoption made in the husband's lifetime, and is not to be taken to restrict the widow's power to do that which the general law prescribes as beneficial to her husband's soul. Thus, upon a careful review of all these writers, it appears that the difference relates rather to what shall be taken to constitute, in cases of necessity, evidence of authority from the husband, rather than to the authority to adopt being independent of the husband."

Bengal school.

Under the *Bengal* school of law a widow cannot adopt a son without the express permission of her husband.³

Where a power of adoption is given to two widows successively the elder would have the preference.⁴

Benares
school.

The same rule applies under the *Benares* school of law.⁵

It applies even if the deceased husband was a member of a joint undivided family, and his rights had devolved by survivorship upon the other members of the family.⁶

Jains

Among the Jains, the right of a childless widow to adopt is generally

¹ XV. 1-8; Colebrooke's "Digest," vol. iii. p. 242.

² (1868), 12 M. I. A. 397, at pp. 435, 436; 1 B. L. R. P. C. 1, at p. 12; 10 W. R. P. C. 17, at p. 21.

³ *Solukhna (Mussumaut) v. Ramdola Pande* (1811), 1 Ben. Sel. R. 324 (new edition, 434); *Tara Munee Dibba (Must.) v. Devnarayun Rai* (1824), 3 Ben. Sel. R. 387 (new edition, 516); *Janki Dibeh v. Suda Sheo Rai* (1807), 1 Ben. Sel. R. 197 (new edition, 262); *Kishenkant Goswamee v. Purmanund Goswamee* (1810), 2 W. Macn. 175.

⁴ *Bijoy Krishna Karmakar v. Ranjit Lal Karmakar* (1911), 38 Calc. 694.

⁵ *Haimun Chull Sing (Raja) v. Ghunsham Sing (Koomar)* (1834), 2

Knapp, 203; 5 W. R. P. C. 69. (The decision in this case was limited to the district of Etawah, but it has been accepted as declaratory of the law of the Benares school.) *Chowdhry Pudum Singh v. Koer Oodey Singh* (1869), 12 M. I. A. 350; 2 B. L. R. (P. C.) 101; 12 W. R. P. C. 1; *Tulshi Ram v. Behari Lal* (1889), 12 All. 328; *Shumshere Mull (Raja) v. Diraj Konwur (Ranee)* (1818), 2 Ben. Sel. R. 169 (new edition, 216); *Jai Ram Dhami v. Musan Dhami* (1830), 5 Ben. Sel. R. 3. See *Parbhu Lal (Lala) v. Mylne* (1887), 14 Calc. 401, at pp. 415, 416.

⁶ See G. C. Sircar's "Law of Adoption," p. 229.

co-extensive with the right which was possessed by her husband, and does not depend upon his authority, either express or implied.¹

Such right, as being derogatory to the ordinary Hindu law, must be specially proved in each case. It has been affirmed in cases of members of the Saragee Agarwala sect from Meerut,² Aligarh,³ Saharanpur,⁴ and Arrah,⁵ and in a case of the Oswal sect from Moorshedabad,⁶ and also in an old case from Lower Bengal,⁷ in which it does not appear to what sect the parties belonged. In a case in Madras,⁸ it was held that the custom was not proved.

According to the *Dravida* school, a widow can adopt, Dravida school. either with her husband's express permission,⁹ or, if there be no express or implied prohibition by him, with the assent of her husband's kindred.¹⁰

"Inasmuch as the authorities in favour of the widow's power to adopt with the assent of her husband's kinsman proceed in a great measure upon the assumption that his assent to this meritorious act is to be implied whenever he has not forbidden it, so the power cannot be inferred when a prohibition by the husband either has been directly expressed by him, or can be reasonably deduced from his disposition of his property, or the existence of a direct line competent to the full performance of religious duties, or from other circumstances of his family, which afford no plea for a supersession of heirs on the ground of religious obligation to adopt a son in order to complete or fulfil defective religious rights. . . . The same reasons which justify a presumption of authority to adopt in the absence

Prohibition by husband.

¹ *Sheo Singh Rai v. Dakho (Mussu-mut)* (1878), 5 I. A. 87; 1 All. 688; 2 C. L. R. 193; *Asharfi Kunwar v. Rup Chand* (1908), 30 All. 197. See the latter case as to the right of a senior widow to adopt without the concurrence of the junior widow.

² *Sheo Singh Rai v. Dakho (Mussu-mut)* (1878), 5 I. A. 87; 1 All. 688; 2 C. L. R. 193; *Manohar Lal v. Banarsi Das* (1907), 29 All. 495.

³ *Lakshmi Chand v. Gatto Bai* (1886), 8 All. 319.

⁴ *Asharfi Kunwar v. Rup Chand* (1908), 30 All. 197.

⁵ *Harnabh Pershad v. Mandil Dass* (1899), 27 Cal. 379.

⁶ *Manik Chand Golecha v. Jagat Settani Prankumari Bibi* (1889), 17 Cal. 518. It was also held in this case that the adoption of orthodox Hinduism does not affect the right.

⁷ *Govindnath Ray (Maha Rajah) v. Gulal Chand* (1833), 5 Ben. Sel. R. 276 (new edition, 322).

⁸ *Peria Ammani v. Krishnasami* (1892), 16 Mad. 182.

⁹ *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1, at p. 9; 1 Mad. 174, at p. 186; 26 W. R. C. R. 21, at pp. 22, 23; *Raghunadha (Sri) v. Brozokishoro (Sri)* (1876), 3 I. A. 154; 1 Mad. 69; 25 W. R. C. R. 291; *Arundadi Ammal v. Kuppammal* (1867), 3 Mad. H. C. 283.

¹⁰ *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397; 1 B. L. R. (P. C.) 1; 10 W. R. P. C. 17; *Raghunadha (Sri) v. Brozokishoro (Sri)* (1876), 3 I. A. 154, at p. 191; 1 Mad. 69, at p. 81; 25 W. R. C. R. 291, at p. 302; *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1; 1 Mad. 174; 26 W. R. C. R. 21; *Parasara Bhattar v. Rangaraja Bhattar* (1880), 2 Mad. 202; *Arundadi Ammal v. Kuppammal* (1867), 3 Mad. H. C. 283.

Failure of disposition implying prohibition.

Power co-extensive with that of husband.

of express permission are powerful to exclude a presumptive prohibition to adopt when on a new and unforeseen occasion the religious duty arises."¹

"In Madras it is established . . . that, unless there is some express prohibition by the husband, the widow's power, at least with concurrence of *sapēndas* in cases where that is required, is co-extensive with that of the husband."²

The power to adopt with the assent of the husband's kinsmen applies to every case in which a widow might make an adoption under the express authority of husband.³

Thus she can adopt on the death of a natural son,⁴ and she can take successive sons in adoption on the death of sons previously adopted, either with the assent of her husband⁵ or of his kinsmen.

Nambudri Brahmins.

Among the *Nambudri Brahmins* in *Malabar* in theory the widow's power is as under the *Dravida* school, but in its application the husband's authority is presumed, unless there is an express prohibition, at any rate when the adopting widow is the surviving member of the *illam*.⁶

Consent of what kinsmen sufficient. Joint family.

"Where the husband's family is . . . undivided, . . . the father of the husband, if alive, might, as the head of the family and the natural guardian of the widow, be competent by his sole assent to authorize an adoption by her."⁷

Where the father is not alive, it was said in the *Ramnad* case⁸ that "the consent of all the brothers, who in default of adoption would take the husband's share, would probably be required, since it would be unjust to allow the widow to defeat their interest by introducing a new coparcener against their will," but an adoption with the consent of the manager of the joint family, who is acting *bona fide*, would apparently be upheld.⁹

¹ *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at pp. 443, 445; 1 B. L. R. (P. C.) 1, at pp. 17, 18, 19; 10 W. R. P. C. 17, at pp. 24, 25.

² *Gurulingaswami (Sri Balusu) v. Ramalakshamma (Sri Balusu)* (1899), 26 I. A. 113, at p. 128; 22 Mad. 398, at p. 408; 3 C. W. N. 427, at pp. 436, 437; 1 Bom. L. R. 226.

³ *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narayya* (1876), 4 I. A. 1, at p. 10; 1 Mad. 174, at p. 187; 26 W. R. C. R. 21, at p. 23.

⁴ *Ibid.*

⁵ *Parasara Bhattar v. Rangaraja Bhattar* (1880), 2 Mad. 202, at p. 205.

⁶ *Vasudevan v. Secretary of State* (1887), 11 Mad. 157, at p. 179. In this case the widow was the sole surviving member of the *illam*, so the question whether the consent of the other members was required did not arise (see p. 188).

⁷ *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at pp. 441, 442; 1 B. L. R. (P. C.) 1, at p. 16; 10 W. R. P. C. 17, at p. 23.

⁸ *Ibid.*

⁹ See *Raghunada (Sri) v. Brozokishoro (Sri)* (1876), 3 I. A. 154, at p. 191; 1 Mad. 69, at p. 81; 25 W. R. C. R. 491, at p. 302; Sircar's "Law of Adoption," p. 239.

In the latter case, and also probably in the case of a consent by the father, as head of the family, such due consideration of the propriety of the adoption would be necessary,¹ as is required in the case where the family is separate.²

"Even in the case of an undivided family, when a widow of a member thereof makes an adoption without the authority of her husband or the assent of her father-in-law, it cannot be taken to be the settled law that the assent of all the then surviving members of the coparcenary is absolutely necessary."³ The consent of kinsmen is required on account of the incapacity of women to act rather than to procure the consent of all whose interests will be defeated by the adoption.⁴

Where the joint family consists of several branches, it would seem to be sufficient to obtain the consent of the branch to which the husband belonged.⁵

It is clear that when the family is undivided the requisite authority cannot be sought for outside the family.⁶

Where the widow has taken by inheritance the separate Separate. estate of her husband, the consent of every kinsman, however remote, is not essential. The consent of the father-in-law would be sufficient.⁷ If the father-in-law be dead, "there should be such proof of assent on the part of the *sapindas* as should be sufficient to support the inference that the adoption was made by the widow, not from capricious or corrupt motives, or in order to defeat the interest of this or that *sapinda*, but upon a fair consideration, by what may be called a family

¹ See *Karunabdi Ganesa Ratnamaiyar v. Gopala Ratnamaiyar* (1880), 7 I. A. 173, at pp. 177, 178, 179; 2 Mad. 270, at pp. 279, 280, 281. •

² Below.

³ See *Venkatakrishnamma v. Annapurnamma* (1899), 23 Mad. 486, at pp. 487, 488.

⁴ *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 442; 1 B. L. R. P. C. 1, at p. 17; 10 W. R. P. C. 17, at p. 23; *Narayanasami Naick v. Mangammal* (1905), 28 Mad. 315, at p. 319.

⁵ Sircar's "Law of Adoption," p. 259.

⁶ *Raghunada (Sri) v. Bronokishoro*

(Sri) (1870), 3 I. A. 154, at p. 191; 1 Mad. 69, at p. 81; 25 W. R. C. R. 291, at p. 302, approving of *Ramaswami Iyen v. Bhagati Ammal* (1873), 8 Ma. Jur. 58, where it was held by the Sudr Court of Travancore that the assent of certain separate *dayadies* (kinsmen) of the deceased husband was not sufficient to validate an adoption by a widow to which the husband's undivided brother and the head of the undivided family had not assented.

⁷ *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 442; 1 B. L. R. (P. C.) 1, at pp. 16, 17; 10 W. R. P. C. 17, at p. 23.

council, of the expediency of substituting an heir by adoption to the deceased husband." ¹

A widow should give to all the *sapindas* concerned an opportunity to advise her with regard to making an adoption, or against adopting a particular boy. ²

The omission by the widow to ask the consent of one of two divided brothers of the deceased husband could not be justified by saying that it was known he would refuse. To consult him is essential to the widow's obtaining the mind of the kinsman on the question. ³

Nature of
consent.

The consent of the *sapindas* must be free, and given solely in the due exercise of the discretion confided to them by the law with a view to the selection of a suitable boy for adoption. Thus a consent given on an untrue representation that the widow had received the permission of her husband is of no effect. ⁴

Gifts to pro-
cure assent.

"Though gifts to procure assent might be powerful evidence to show no adoption needed, they do not in themselves go to the root of the legality of an adoption." ⁵

"There is nothing improper in a *sapinda* proposing to give his assent to

¹ *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narayya* (1876), 4 I. A. 1, at p. 14; 1 Mad. 174, at pp. 190, 191; 26 W. R. C. R. 21, at pp. 25, 26, explaining *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. L. A. 397, at pp. 442, 443; 1 B. L. R. (P. C.) 1, at p. 17; 10 W. R. P. C. 17, at p. 23. In the latter case the consent of a majority of the *sapindas* was held sufficient. See *Parasara Bhattar v. Rangaraja Bhattar* (1880), 2 Mad. 202, at p. 206, in which case the assent of some *sapindas* was held sufficient on its being shown that the consent of the others was refused from interested or improper motives, or without a fair exercise of discretion. See also *Venkatakrishnamma v. Annapurnamma* (1899), 23 Mad. 486, where one *sapinda*, without giving any reason, refused to consent. As to the necessity for a consideration by the *sapindas*, see *Raghunadha (Sri) v. Brozokishoro (Sri)* (1876), 3 I. A. 154, at pp. 192, 193; 1 Mad. 69, at pp. 82, 83; 25 W. R. C. R.

291, at pp. 302, 303; *Karunabdh Ganesa Ratnamayyar v. Gopala Ratnamayyar* (1880), 7 I. A. 173; 2 Mad. 270. In this case the family was joint. *Subrahmanyam v. Venkamma* (1903), 26 Mad. 627.

² *Subrahmanyam v. Venkamma* (1903), 26 Mad. 627.

³ *Jonnalagadda Venkamma v. Jonnalagadda Subrahmaniam* (1906), 34 I. A. 22; 30 Mad. 50; 11 C. W. N. 345.

⁴ *Raghunadha (Sri) v. Brozokishoro (Sri)* (1876), 3 I. A. 154, at p. 193; 1 Mad. 69, at p. 82; 25 W. R. C. R. 291, at pp. 302, 303; *Karunabdh Ganesa Ratnamayyar v. Gopala Ratnamayyar* (1880), 7 I. A. 173; 2 Mad. 270; *Jonnalagadda Venkamma v. Jonnalagadda Subrahmaniam* (1906), 34 I. A. 22; 30 Mad. 50; 11 C. W. N. 345; 9 Bom. L. R. 89; S. C. in Court below, *Subrahmanyam v. Venkamma* (1903), 26 Mad. 627.

⁵ *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. L. A. 397, at p. 443; 1 B. L. R. (P. C.) 1, at p. 17; 10 W. R. P. C. 17, at p. 24.

a widow adopting his own son, if such son be the nearest *sapinda*, and refusing to give his assent to her adopting a stranger or more distant *sapinda*, if there be no reasonable objection to the adoption of his own son,"¹ or in his stipulating that his own share should not be reduced by the adoption.²

When the majority of the *sapindas* consent, it will be presumed that their assent was given on *bond fide* grounds.³

The assent must be to an adoption of a specified boy, and not to an adoption generally. It must be acted upon within a reasonable time,⁴ and has no operation after the death of the person giving it.⁵

An adoption by the senior widow with the consent of the *sapindas* is valid without the consent of the junior widow.⁶ Senior widow

According to the *Maharashtra* school a widow can adopt *Maharashtra school* either with her husband's express permission⁷ or without such permission,⁸ if the estate be vested in her⁹ and there be no express¹⁰ or implied¹¹ prohibition by him. If the husband was

¹ *Subrahmanyam v. Venkamma* (1903), 26 Mad. 27, at p. 837.

² *Srinivasa Ayyangar v. Rangasami Ayyangar* (1907), 30 Mad. 450.

³ *Venkatakrishnamma v. Annapurnamma* (1899), 23 Mad. 486, at p. 488.

⁴ See *Suryanarayana v. Venkataramana* (1903), 26 Mad. 681, at p. 685.

⁵ See *Lakshmi Bai v. Vishnu Vasudev Bele* (1905), 29 Bom. 410; 7 Bom. L. R. 436.

⁶ *Narayanadasami Naick v. Mangamall* (1905), 28 Mad. 315. See *post*, p. 121. As to a joint adoption, see *ante*, p. 110.

⁷ *Dinkar Sitaram Prabhu v. Ganesh Shivram Prabhu* (1879), 6 Bom. 505; G. C. Sircar's "Law of Adoption," p. 228.

⁸ *Collector of Madura v. Moottoo Ramalinga Sathupathy* (1868), 12 M. L. A. 397, at p. 436; 1 B. L. R. (P. C.) 1, at p. 12; 10 W. R. P. C. 17, at p. 21; *Gopal Balkrishna Kenjale v. Vishnu Raghunath Kenjale* (1898), 23 Bom. 250; *Ramchandra Bhagavan v. Mulji Nanabhai* (1896), 22 Bom. 558, at pp. 566, 568; *Amava v. Mahadgauda* (1896), 22 Bom. 416, at 418; *Gavdappa v. Girimallappa* 1894, 19 Bom. 331, at p. 337;

Vandrayan Jekisan (Patel) v. Manilal Chunilal (Patel) (1890), 15 Bom. 565; *Ramji v. Ghamau* (1879), 6 Bom. 498; *Rupchand Hindumal v. Rakhmabai* (1871), 8 Bom. H. C. (A. C.) 114; *Rakhmabai v. Radhabai* (1868), 5 Bom. H. C. (A. C.) 181, and earlier cases cited therein; "Mayukha," chap. iv. s. 5, paras. 17, 18.

⁹ *Ramji v. Ghamau* (1879), 6 Bom. 498, at pp. 503, 504; *Dinkar Sitaram Prabhu v. Ganesh Shivram Prabhu* (1879), 6 Bom. 505.

¹⁰ *Gopal Balkrishna Kenjale v. Vishnu Raghunath Kenjale* (1898), 23 Bom. 250, at p. 256; *Ramchandra Bhagavan v. Mulji Nanabhai* (1896), 22 Bom. 558, at p. 566; *Vandrayan Jekisan (Patel) v. Manilal Chunilal (Patel)* (1890), 15 Bom. 565, at p. 574; *Bayabai v. Bala* (1866), 7 Bom. H. C. App. i.; *Rupchand Hindumal v. Rakhmabai* (1871), 8 Bom. H. C. (A. C.), 114.

¹¹ *Gopal Balkrishna Kenjale v. Vishnu Raghunath Kenjale* (1898), 23 Bom. 250, at p. 256. In *Vandrayan Jekisan (Patel) v. Manilal Chunilal (Patel)* (1890), 15 Bom. 565, at p. 574, the Court treated an express prohibition as the only qualification

undivided in estate¹ she cannot adopt without either his express permission² or the consent of his coparceners.³

Implied
authority of
husband.

Where she has no express authority, the widow derives her power from authority presumed to have been given to her by her husband.⁴ Such authority is implied even when the husband was a minor at the time of his death,⁵ and even where the widow lived apart from her husband.⁶

Adoption of
only son.

It has been held that the husband's authority would not be presumed in the case of the adoption of an only son, an act which, although not illegal, was considered sinful,⁷ but apparently that decision would not now be followed,⁸ and it would be held that in the absence of propitiation, her authority is co-extensive with that of her husband.⁹

to the power of the widow, but it is submitted that the observations of the Judicial Committee in the *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at pp. 443, 445; 1 B. L. R. (P. C.) 1, at pp. 17, 18, 19; 10 W. R. P. C. 17, at pp. 24, 25, ante, p. 121, apply equally to a case governed by the *Maharashtra* school. In *Bayabai v. Bala* (1866), 7 Bom. H. C. App. i., at p. xx., the husband on his death-bed refused to take a son in adoption. This was held to prevent the widow adopting, and in *Dnyanoba v. Radhabai*, Bom. P. J. 1894, p. 22, where the husband had repudiated his wife on account of her misconduct, a prohibition was implied. *Lakshmappa v. Ramava* (1875), 12 Bom. H. C. 362.

¹ Whether or not the husband possessed separate property, see *Raghunadha (Sri) v. Brozokishoro (Sri)* (1876), 3 I. A. 154, at pp. 191, 192; 1 Mad. 69, at pp. 81, 82; 25 W. R. C. R. 291, at p. 302.

² *Bachoo Hurkisondas v. Mankorebai* (1907), 34 I. A. 107; 31 Bom. 373; 11 C. W. N. 769; 9 Bom. L. R. 646; S. C. in Court below (1904), 29 Bom. 51; 6 Bom. L. R. 268.

³ *Amava v. Mahadgauda* (1896), 22 Bom. 416, at p. 418; *Ramji v. Ghamau* (1879), 6 Bom. 498; *Dinkar Sitaram Prabhu v. Ganesh Shivram Prabhu* (1879), 6 Bom. 505.

⁴ *Venkappa Bapu v. Jivaji-Krishna* (1900), 25 Bom. 306, at p. 311; 2 Bom. L. R. 1101; *Amava v. Mahadgauda* (1896), 22 Bom. 416, at p. 418; *Ramchandra Bhagavan v. Mulji Nana*

bhai (1896), 22 Bom. 558, at p. 567; *Keshav Ramkrishna v. Govind Ganesh* (1884), 9 Bom. 94, at p. 97; *Lakshmappa v. Ramava* (1866), 12 Bom. H. C. 364; *Rukhmabai v. Radhabai* (1868), 5 Bom. H. C. (A. C.) 181, at p. 192. In *Lakshmibai v. Sarasvatibai* (1899), 23 Bom. 789, at p. 794; 1 Bom. L. R. 420, Jenkins, C.J., inclined to the opinion that in the Bombay Presidency the widow's right is inherent and not merely delegated. This view is supported by Bombay authorities (see "*Nirnaya Sindhu*" Sri Venkateshwar, ed. p. 229; "*Vyavahara Mayukha* (Maudlik)," p. 42; "*Samskara Kaustaba*," Benares ed., Saka 1783, p. 44), but is scarcely possible having regard to the observations of the Judicial Committee in *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 436; 1 B. L. R. (P. C.) 1, at p. 12; 10 W. R. P. C. 17, at p. 21.

⁵ *Vandrayan Jekisan (Patel) v. Manilal Chunilal (Patel)* (1890), 15 Bom. 565.

⁶ *Lakshmibai v. Sarasvatibai* (1899), 23 Bom. 789; 1 Bom. L. R. 420.

⁷ *Lakshmappa v. Ramava* (1875), 12 Bom. H. C. 364.

⁸ See *Gurulingaswami (Sri Balusu) v. Ramalakshamma (Balusu)* (1899), 26 I. A. 113, at p. 128; 22 Mad. 398, at p. 408; 3 C. W. N. 427, at p. 437; 1 Bom. L. R. 226, post, pp. 122, 123.

⁹ See *Lakshmibai v. Sarasvatibai* (1899), 23 Bom. 789; 1 Bom. L. R. 420.

As under the Dravida school,¹ an assent given by her father-in-law,² as the head of the family, and as natural guardian of the widow, to an adoption in his lifetime,³ would validate an adoption by the widow of a member of the undivided family. The rules as to the nature and sufficiency of the consent required for the adoption by a widow governed by the Dravida school⁴ apparently apply to the case of adoption in an undivided family governed by the Maharashtra school of law.

Where the family is divided, an elder widow can adopt without the consent of the junior widow;⁵ but not so as to divest property which has vested in the younger widow as heir to a son.⁶ The junior widow cannot adopt without the consent of the senior widow,⁷ unless, perhaps, where the latter be incapacitated, as where she is leading an irregular life.⁸

A joint adoption by the widows seems possible.⁹

According to the *Mithila* school, a widow cannot under any circumstances adopt a son to her husband.¹⁰ She can under that school adopt a son to herself in the *Kritrima* form.¹¹

In the Punjab the custom varies in different localities.¹²

A minor¹³ widow, acting under an express power given to

Undivided family.

Where more than one widow.

Mithila school.

Punjab.

Adoption by minor widow.

¹ *Ante*, pp. 116, 117.

² *Vithoba v. Bapu* (1890), 15 Bom. 110; *Gopal Balkrishna Kenjale v. Vishnu Raghunath Kenjale* (1898), 23 Bom. 250, at pp. 255, 256. See *Ramji v. Ghamau* (1879), 6 Bom. 498, at p. 505. The observations of the Judicial Committee in *Raghunadha (Sri) v. Brozokishoro (Sri)* (1876), 3 I. A. 154, at p. 191; 1 Mad. 69, at p. 81; 25 W. R. C. R. 291, at p. 302, seem applicable to the Maharashtra school as well as to the Dravida school.

³ *Lakshmi Bai v. Vishnu Vasudev Bele* (1905), 29 Bom. 410; 7 Bom. L. R. 436.

⁴ *Ante*, pp. 116-119.

⁵ *Rakhmabai v. Radhabai* (1886), 5 Bom. H. G. (A. C.) 181, at p. 192; *Ramji v. Ghamau* (1879), 6 Bom. 498, at p. 503.

⁶ See *Lakshmi Bai v. Sarasvatibai* (1899), 23 Bom. 789, at p. 794; 1 Bom. L. R. 420; *Anandibai v. Kashibai* (1904), 28 Bom. 461; 6

Bom. L. R. 464; see *post*, p. 187.

⁷ *Padajirav v. Ramrav* (1888), 13 Bom. 160.

⁸ Steele, 187, 188.

⁹ *Indar Kunwar (Maharani) v. Jaipal Kunwar (Maharani)* (1888), 15 I. A. 127, at pp. 144, 145; 15 Calc. 725, at pp. 740, 747. See *ante*, p. 110, note 9.

¹⁰ "Dattaka Mimamsa," s. 1, para. 16; "Vivada Chintamani" (Tagore's translation), pp. 74, 75; W. Macnaghten's "Hindu Law," vol. i. pp. 95, 100. See *Jairam Dhami v. Musan Dhami* (1830), 5 Ben. Sel. R. 3 (new edition, 3), but that was not a *Mithila* case, and therefore was not decided according to the *Mithila* law, although *Mithila* authorities were cited.

¹¹ *Post*, pp. 151-154.

¹² Tupper's "Punjab Customary Law," vol. ii. pp. 154, 178, 205; vol. iii. pp. 78 *et seq.*, 87, 89, 90.

¹³ I.e. who has not attained the age of majority according to Hindu law (*ante*, pp. 42, 43).

her by her husband, can take in adoption,¹ provided, at any rate, she has attained sufficient maturity of understanding to comprehend the nature of the act.² The same rule would apparently also apply to an adoption under the Dravida school with the authority of the *sapindas*,³ and to a case under the Maharashtra school, where similar authority had been given. It is apparently unsettled whether a minor widow can, in a case governed by the Maharashtra school, act upon the implied authority of her husband.⁴

When widow
can adopt.

A widow cannot adopt unless she be the widow of the last full owner,⁵ or the estate is vested in her as heir to her son, legitimate or adopted, who has died unmarried, or has left no child or widow surviving him,⁶ or (it is submitted) unless the circumstances be such that the estate will vest in the adopted son on his adoption.⁷

¹ *Mondakini Dasi v. Adinath Dey* (1890), 18 Calc. 69; *Haradhun Rai v. Biswanath Rai* (1815), W. Macnaghten's "Hindu Law," vol. ii. p. 180; Sircar's "Vyavastha Darpana," 2nd ed., p. 769. *Contrâ* G. C. Sircar's "Law of Adoption," p. 249. It is there suggested that an adoption by a minor widow is voidable, but it is submitted that, if it be otherwise unobjectionable, it cannot be avoided. The Hindu law does not contemplate a voidable adoption.

² *Mondakini Dasi v. Adinath Dey* (1890), 18 Calc. 69, at p. 72. In this case the widow was 11 or 12 years of age, but, as the boy to be adopted had been designated by her husband, the discretion to be exercised by her was limited. It may be questioned whether in the absence of such limitation a girl of so tender an age would be competent to exercise sufficient discretion in the selection of a boy. See *ante*, p. 103.

³ See Mayne's "Hindu Law," 7th ed., pp. 150, 151.

⁴ Sircar's "Law of Adoption," p. 250.

⁵ *Poyapa Akkapa Patel v. Appanna* (1898), 23 Bom. 327, at p. 329; *Gopal Balkrishna Kenjale v. Vishnu Baghunath Kenjale* (1898), 23 Bom.

250; *Vasudeo Vishnu Manohar v. Ramchandra Vinayah Modak* (1896), 22 Bom. 551. See also cases, *post*, pp. 124, 125.

⁶ *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1; 1 Mad. 174; 26 W. R. C. R. 21; *Gavdappa v. Girimallappa* (1894), 19 Bom. 331; *Ravji Vinayakrav Jaggannath Shankarsett v. Lakshmi Bai* (1897), 11 Bom. 381, at p. 397. See *post*, pp. 124, 125.

⁷ As was the case in *Deeno Moyee Dossee (Sreemutty) v. Doorga Pershad Mitter* (1865), 3 W. R. M. A. 6, where a Hindu, governed by the Bengal school of law, left his property to a boy to be adopted by the widow of his son, who had predeceased him. In this case the boy took under the will, but the Court treated the adoption as valid, and in *Deeno Moyee Dossee (Sreemutty) v. Tarachurn Koondoo Chowdhry* (1865), Bourke A. O. C. 48; 3 W. R. M. A. 7, note, which referred to the same adoption, the Court held that the widow took as heir of the son so adopted and thus upheld the adoption. There might also be the case of a woman taking as heir of her son's son.

It follows that a woman in the Bombay Presidency who inherits as widow of a *gotraja sapinda*¹ cannot adopt so as to confer upon the adopted son a right to the property so inherited by her.² There seems to be no reason why she should not validly adopt to her husband.

Where a son who is a coparcener in joint property governed by the Mitakshara school of law, or being governed by either school of law is possessed of separate property, predeceases his father there seems to be no reason why his widow should not take a son in adoption, and, quite apart from the possession of property, why such adoption should not be valid at any rate for spiritual purposes.³

Sastri G. L. Sircar says in his "Law of Adoption"⁴—

"If the ancestral estate is vested in the mother-in-law by reason of her son predeceasing his father, it would appear that both the mother-in-law and daughter-in-law are competent to adopt. What has been laid down is that the adoptive father's estate must be vested in the adopting widow, in order that an adoption made by her may be valid. If the daughter-in-law adopts first, then the mother-in-law cannot make an adoption during the life of the son adopted by the daughter-in-law, for the father-in-law cannot under that circumstance be considered as destitute of male issue, there being that grandson by adoption in existence. But if the mother-in-law adopts first, then the daughter-in-law cannot be precluded thereby from making an adoption for the spiritual benefit of her husband who would not be benefited by his mother's adoption. This distinction would apply to all similar cases in all the schools."

Competition between mother-in-law and daughter-in-law.

In the absence of express direction to the contrary,⁵ a power of adoption, whether express or implied,⁶ may be exercised at any time, provided it be not exhausted, or be not at an end.⁷

Time for exercise of power.

Adoptions made twelve,⁸ twenty-two,⁹ twenty-five,¹⁰ fifty-two,¹¹ and even seventy-one¹² years after the death of the adoptive father have been upheld.

Except, perhaps, in Bengal, a power, which does not expressly

Successive adoptions.

¹ *Post*, p. 396.

² *Datto Govind Kulkarni v. Pandurang Vinayak* (1908), 32 Bom. 499; 10 Bom. L. R. 692.

³ See *Payapa v. Appanna* (1898), 23 Bom. 327.

⁴ P. 264.

⁵ See *Mutsaddi Lal v. Kundan Lal* (1906), 33 I. A. 55; 28 All. 377; 8 Bom. L. R. 371.

⁶ F. Macn. 187.

⁷ *Post*, pp. 124, 125.

⁸ Anon. (1814), 2 Morl. Dig. 18.

⁹ *Bhasker Buchajee v. Narro Raghunath* (1826), Bom. Sel. R. 24.

¹⁰ *Giriowa v. Bhimaji Raghunath* (1884), 9 Bom. 58.

¹¹ *Brijbhokunjee Muharaj (Sree) v. Gokoolbhotsaojee Muharaj (Sree)* (1816), 1 Borr. 181 (edition of 1862, p. 217).

¹² *Raje Vyankatray Anandray Nimbalkar v. Jayavantrav* (1867), 4 Bom. H. C. (A. C.) 191.

or impliedly prohibit successive adoptions, is not exhausted by having been once exercised.¹

According to the Bengal authorities, such permission is exhausted by having been once exercised;² but in *Kannepalli Suryanarayana v. Pucha Venkata Ramana*,³ the Judicial Committee in dealing with a Madras case, say that they are unable to attach much weight to *Gournath Chowdhree v. Arnopoorna Chowdrain*,⁴ and also say, "The more liberal rule had been followed by the High Court of Bombay, as well as in Madras, and was not without support in Bengal (see *Surendra Nandan v. Sailaja Kant Das Mahapatra*,⁵ and the *Ramnad* case⁶)." It is therefore unlikely that, if a Bengal case on this subject were to come before the Judicial Committee, the Bengal authorities would be followed. See *ante*, p. 112.

Termination
of power.

A widow's power to adopt is at an end for all purposes as soon as the estate of her husband is vested in an heir⁷ (other

¹ *Kannepalli Suryanarayana v. Pucha Venkata Ramana* (1906), 33 I. A. 145; 29 Mad. 382; 10 C. W. N., 921; 8 Bom. L. R. 700; S. C. in Court below, *Suryanarayana v. Venkataramana* (1903), 26 Mad. 681. See *Parasara Bhattar v. Rangaraja Bhattar* (1880), 2 Mad. 202; *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1, at p. 10; 1 Mad. 174, at pp. 186, 187; 26 W. R. C. R. 21, at p. 23.

² *Purmanund Bhuttycharuj v. Oomakunt Lahoree* (1828), 4 Ben. Sel. R. 318 (new edition, 404); *Gournath Chowdhree v. Arnopoorna Chowdrain*, Ben. S. D. A. 1852, p. 332; *Deeno Moyee Dossee (Sreemutty) v. Tarachurn Koondoo Chowdhry* (1865), 1 Bourke (A. O. C.) 48; 3 W. R. M. A. 7, note; *Mohendrololl Mookerjee v. Rookney Dabee* (1864), Coryton, 42, at p. 46; F. Macn. 156, 179. Sir W. Macnaghten (vol. i. pp. 86-90) treats the point as disputed. He says that according to the doctrine of the "Dattaka Mimansa," the second adoption would clearly be illegal; but that Jagannatha holds that it would be valid, the object of the first being defeated.

³ (1906), 33 I. A. 145; 29 Mad. 382; 10 C. W. N. 921; 8 Bom. L. R. 700.

⁴ Ben. S. D. A. 1852, p. 332.

⁵ (1891), 18 Calc. 385. In that case there had been permission to adopt three sons in succession.

⁶ *Collector of Madura v. Moottoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 443; 1 B. L. R. P. C. 1, at pp. 17, 18; 10 W. R. (P. C.) 17, at p. 24. This was a Madras case.

⁷ In *Ramkrishna Ramchandra v. Shamrao Yeshwant* (1902), 26 Bom. 526; 4 Bom. L. R. 315, the son had left a son, and in *Annammah v. Mabbu Bah Reddy* (1875), 8 Mad. H. C. 108, he had left an adopted son. In the following cases the son had left a widow: *Bhoobun Moyee Debia (Mussumat) v. Ram Kishore Achary Chowdhry* (1865), 10 M. I. A. 279, at p. 310; 3 W. R. P. C. 15, at p. 18; *Pudma Coomari Debi v. Court of Wards* (1881), 8 I. A. 229, at p. 245; 8 Calc. 302, at p. 309; *Tarachurn Chatterji v. Suresh Chunder Mookerji* (1889), 16 I. A. 166; 17 Calc. 122; *Thayammal v. Venkatarama Aiyar* (1887), 14 I. A. 67, at pp. 70, 71; 10 Mad. 205, at p. 209; *Amava v. Mahadgauda* (1896), 22 Bom. 216; *Keshav Ram Krishna v. Govind Ganesh* (1884), 9 Bom. 94; *Manikyamala Bose v. Nanda Kumar Bose* (1906), 33 Calc. 1306; 11 C. W. N. 12.

than herself ¹), of his natural or adopted ² son, or of his son's son, ³ or son's son's son who has inherited to him, and is not revived by the death of such heir, even when on such death she herself succeeds to the property which belonged to her husband, and therefore by adopting, divests no estate but her own. ⁴

This rule applies, whether there be an express power given by the husband, or such power be implied, ⁵ as in the Maharashtra school, or the power be exerciseable with the consent of the *sapindas*. ⁶

It is unsettled whether this rule applies in its entirety to an adoption by a Jain widow, who can adopt without the consent of her husband. ⁷ It has been so applied in Bombay, ⁸ but in Calcutta it has been held ⁹ that a Jain widow in whom the estate was vested can adopt, although her husband's adopted son had died leaving a son as his heir. Although the decision rested on the distinction between the power of a Jain widow and that of the widow of an ordinary Hindu, the Court seems to have acted on the view of the decision in *Bhoobunmoyee's case*, ¹⁰ which was accepted by the Calcutta High Court in *Puddo Kumaree Debee v. Juggut*

¹ *Vellanki Vengkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1; 1 Mad. 174; 26 W. R. C. R. 21; *Venkappa Bapu v. Jivaji Krishna* (1900), 25 Bom. 306, at p. 310; 2 Bom. L. R. 1101; *Gavdappa v. Girimallappa* (1894), 19 Bom. 331. See *Payapa Akkapa Patel v. Appanna* (1898), 2 Bom. 325, and cases *post*, p. 187, notes 3, 4.

² See *Bhoobun Moyee Debia (Mussumat) v. Ram Kishore Acharj Chowdhry* (1865), 10 M. I. A. 279, at p. 310; 3 W. R. P. C. 15, at p. 18; *Manik Chand Golecha v. Jagat Settani Prunkumari Bibi* (1889), 17 Calc. 517.

³ In *Faizuddin Ali Khan v. Tincowri Saha* (1895), 22 Calc. 565, the son was succeeded by his mother, and in *Drobomoyee Chowdhraim v. Shama Churn Chowdhry* (1885), 12 Calc. 246, by his grandmother. *Gavdappa v. Girimallappa* (1894), 19 Bom. 331.

⁴ *Pudma Coomari Debi v. Court of Wards* (1881), 8 I. A. 229; 8 Calc. 302, reversing *Puddo Kumaree Debee v. Juggut Kishore Acharjee* (1879), 5 Calc. 615. (This case also had the effect of overruling *Bykant Monee*

Itay v. Kistosonderee Roy (1867), 7 W. R. 392.) *Thayammal v. Venkatarama Aiyar* (1887), 14 I. A. 67, at pp. 70, 71; 10 Mad. 205, at p. 209; *Ramkrishna Ramchandra v. Shumrao Yeshwant* (1902), 26 Bom. 526; 4 Bom. L. R. 315; *Gavdappa v. Girimallappa* (1894), 19 Bom. 331; *Krishnarav Trimbak Hasabnis v. Shankarav Vinayak Hasabnis* (1892), 17 Bom. 164.

⁵ *Amava v. Mahadgauda* (1896), 22 Bom. 416; *Keshav Ram Krishna v. Govind Ganesh* (1884), 9 Bom. 94; *Ramchandra v. Shamrao* (1902), 26 Bom. 526, at p. 528. See *Anandibai v. Kashibai* (1904), 28 Bom. 461; 6 Bom. L. R. 464.

⁶ *Thayammal v. Venkatarama Aiyar* (1887), 14 I. A. 67; 10 Mad. 205.

⁷ *Ante*, pp. 114, 115.

⁸ *Amava v. Mahadgauda* (1896), 22 Bom. 416.

⁹ *Manik Chand Golecha v. Jagat Settani Pran Kumari Bibi* (1889), 17 Calc. 518, at pp. 537, 538.

¹⁰ *Bhoobun Moyee Debia (Mussumat) v. Ram Kishore Acharj Chowdhry* (1865), 10 M. I. A. 277, at p. 310; 3 W. R. P. C. 15, at p. 18.

Kishore Acharjee,¹ but which was not accepted by the Judicial Committee in the appeal from that decision.²

Death of son
after attain-
ment of
ceremonial
capacity.

It has been attempted to extend the rule to the case where the son, although he has left no heir, other than the adopting mother, had attained to full age and complete ceremonial capacity,³ or had been married,⁴ but this extension has not been recognized.⁵

Surrender of
estate.

It may be a question whether the power to adopt would not be at an end when the widow has divested herself of the estate by surrender, or authorized alienation.⁶

Joint family.

It is submitted that in the case of a joint family governed by the Mitakshara law, the power of a widow to adopt extends until partition.⁷

A widow of a deceased coparcener cannot adopt after the property has vested in a widow or other heir of the last survivor of the coparcenary.⁸

Remarriage.

A widow by remarriage apparently loses her power to take in adoption.⁹

Unchaste
widow.

It is unsettled whether an unchaste widow can adopt.

In *Sayamalal Dutt v. Saudamini Dasi*,¹⁰ Norman, J., held that an unchaste widow, who was pregnant by the man with whom she was living in a state of concubinage, and who had not performed any expiation, could not take in adoption. This decision was based upon the alleged necessity for the performance of religious ceremonies, but, as the parties were Sudras, it is clear¹¹ that no religious ceremonies were necessary, and it is therefore doubtful whether this decision can be viewed as an authority. Where religious ceremonies are unnecessary (and it is by no means clear that in any case religious ceremonies are requisite in the case of adoption by a

¹ (1879), 5 Cal. 615.

² *Pudma Coomari Debi v. Court of Wards* (1881), 8 I. A. 229; 8 Cal. 302.

³ See *Ram Soondur Singh v. Surbance Dossee* (1874), 22 W. R. C. R. 121; *Gavdappa v. Girimallappa* (1894), 19 Bom. 331, at p. 337; *Amava v. Mahadgavda* (1896), 22 Bom. 416, at p. 421; *Verabhar Ajubhai v. Hiraba (Bai)* (1903), 30 I. A. 234; 27 Bom. 492; 7 C. W. N. 716; 5 Bom. L. R. 534.

⁴ *Venkappa Bapu v. Jivaji Krishna* (1900), 25 Bom. 306, see p. 311; 2 Bom. L. R. 1101.

⁵ Cases in notes 3 and 4 above.

⁶ See Sircar's "Law of Adoption," p. 416.

⁷ See Sircar's "Law of Adoption," pp. 253, 254.

⁸ *Adivi Suryaprokasa Rao v. Nidamarty Gangaraju* (1909), 33 Mad. 228.

⁹ West and Bühler, p. 999, referred to in *Panchappa v. Sanganbasawa* (1899), 24 Bom. 89, at p. 94; 1 Bom. L. R. 543; Sircar's "Law of Adoption," p. 251, see, however, *Putlabai v. Mahadu* (1908), 33 Bom. 107; 10 Bom. L. R. 1134.

¹⁰ (1870), 5 B. L. R. 362.

¹¹ *Post*, p. 147.]

widow¹), there seems to be no other authority prohibiting adoption by an unchaste widow. If she be not actually pregnant, she can remove the bar, if it be one, by expiation.²

As a widow adopts, not for her own benefit, but for that of her deceased husband, it may seem hard that her want of chastity should deprive him of the benefits which, according to Hindu ideas, accrue from an adoption.

The question whether a widow, who is in a state of ceremonial impurity from the death or birth of a relation, and who has not performed the necessary expiation, is competent to adopt, is apparently the same as the question whether a man can under such circumstances adopt.³

Ceremonial
impurity.

If she can, as apparently she can, depute a relation to perform such ceremonies, if any, as may be necessary,⁴ there can be no objection to an adoption by her. There is, moreover, a question whether any religious ceremonies are necessary⁵ in the case of an adoption by a widow.⁶ If none are necessary, her ceremonial impurity cannot affect the adoption.

A widow's power of adoption cannot be exercised unless the circumstances are such as would have justified an adoption by her husband, if alive.⁶

Adoption only
valid if hus-
band could
have adopted.

Thus she could not adopt a boy whom her husband could not have adopted, and she cannot adopt so long as a son, son's son, son's son's son of her husband be in existence.⁷ During that time her power of adoption is in suspense.⁸ In the event of the son, grandson, or great-grandson dying unmarried, or leaving no son or widow behind him, the power, if it still be in existence,⁹ can be exercised.¹⁰

A widow is under no legal obligation to exercise a power of adoption.¹¹ An express direction by the husband cannot be

No obligation
to adopt.

¹ Post, p. 149.

² See *Thukoo Baee Bhadr v. Ruma Baee Bhide* (1824), 2 Borr. 446, at p. 456.

³ Ante, pp. 106, 107. See *Ranganayakamma v. Alwar Setti* (1889), 13 Mad. 214; *Ravji Vinayakrav Jagganath Shankarsett v. Lakshmi Bai* (1887), 11 Bom. 381, at p. 395.

⁴ See *Lakshmi Bai v. Ramchandra* (1896), 22 Bom. 590; *Vijayarangam v. Lakshman* (1871), 8 Bom. H. C. (O. C.) 244; Sircar's "Law of Adoption," p. 213.

⁵ Post, p. 149.

⁶ See ante, p. 99.

⁷ *Gopelall v. Chundroolee Bhoorjee*

(*Mussamut Sree*) (1872), I. A. Sup. Vol. 131; 11 B. L. R. 391; 19 W. R. C. R. 12.

⁸ *Gavdappa v. Gvimallappa* (1894), 19 Bom. 331, at p. 337.

⁹ See ante, pp. 124, 125.

¹⁰ *Gavdappa v. Gvimallappa* (1894), 19 Bom. 331, at p. 337; *Eykant Monnee Roy v. Kasto Soonderee Roy* (1867), 7 W. R. C. R. 392. See *Vellank Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1; 1 Mad. 174; 26 W. R. C. R. 21.

¹¹ *Bazmundoss Mookerjee v. Tarinee (Mussamut)* (1858), 7 M. I. A. 169, at p. 190; *Mutsaddi Lal v. Kundan*

enforced,¹ even if he directed the adoption of a particular boy.² The widow does not, by the non-exercise of the power, forfeit any of her rights as widow,³ or mother.⁴

In a case where the husband has power to deal with property by will there is nothing apparently to prevent him from enforcing the exercise of a power of adoption by a gift over of his property to some one other than the widow, in the event of the power not being exercised within a specified time.

Until she actually adopts, a widow can exercise no rights on behalf of the boy, the adoption of whom she is contemplating.⁵

Agreement not
to adopt.

It is unsettled whether a covenant by a widow not to adopt is valid.⁶

Such question might depend upon the nature of the power (if any).⁷

It is submitted that she could not be restrained from exercising a power, which is given to her, not for her own benefit, but for that of her husband.

Lal (1906), 33 I. A. 55; 28 All. 377; 8 Bom. L. R. 371; *Uma Sunduri Dabee v. Surobinee Dabee* (1881), 7 Calc. 288; 9 C. L. R. 83; *Pearee Dayee (Mussamut) v. Hurbunsee Kooer (Mussamut)* (1873), 19 W. R. C. R. 127; *Deeno Moyee Dossee (Sreemutty) v. Doorga Pershad Mitter* (1865), 3 W. R. M. A. 6, at p. 7; *Dino Moyee Chowdhraim v. Rehling* (1865), 2 W. R. M. A. 25; *Rajcoomaree (Sreemutty) v. Nobocoomar Mullick* (1856), 1 Boul. 137; Sev. 641, note; *Dyamoyee Chowdhraim v. Rasbeharee Singh*, Ben. S. D. A. 1852, 1001, at p. 1013. See *Shamavahoo v. Dwarkadas Vasanji* (1878), 12 Bom. 202.

¹ See *Uma Sunduri Dabee v. Surobinee Dabee* (1881), 7 Calc. 288; 9 C. L. R. 83; *Dino Moyee Chowdhraim v. Rehling* (1865), 2 W. R. M. A. 25.

² See *Prasannamayee Dasi v. Kadambini Dasi* (1868), 3 B. L. R. O. C. 85. This question was suggested, but not decided, in *Bamundoss Mookerjee v. Tarinee (Mussamut)* (1858), 7 M. I. A. 169, at p. 190, and in *Shamavahoo v. Dwarkadas Vasanji* (1878), 12 Bom. 202, at p. 215.

³ *Bamundoss Mookerjee v. Tarinee*

(*Mussamut*) (1858), 7 M. I. A. 169, at p. 190; *Raman Anmal v. Subban Annai* (1865), 2 Mad. H. C. 399; *Uma Sunduri Dabee v. Surobinee Dabee* (1881), 7 Calc. 288; 9 C. L. R. 83; *Lakshmana Rau v. Lakshmi Ammal* (1881), 4 Mad. 160; *Prasannamayee Dasi v. Kadambini Dasi* (1868), 3 B. L. R. O. C. 85; *Deeno Moyee Dossee (Sreemutty) v. Doorga Pershad Mitter* (1865), 3 W. R. M. A. 6, at p. 7; *Deeno Moyee Dossee (Sreemutty) v. Tarachurn Koondoo Chowdhry* (1865), Bourke, A. O. C. 48; 3 W. R. M. A. 7, note; *Dino Moyee Chowdhraim v. Rehling* (1865), 2 W. R. M. A. 25.

⁴ *Deeno Moyee Dossee (Sreemutty) v. Tarachund Koondoo Chowdhry* (1865), Bourke, A. O. C. 48; 3 W. R. M. A., 7 note.

⁵ *Subudra Chowdhraim (Mussamut) v. Goluknath Chowdhry* (1843), 7 Ben. Sel. R. 143 (new edition, 160).

⁶ In *Assur Purshotam v. Ratanbai* (1888), 13 Bom. 56, the Court refused to issue an *ad interim* injunction restraining the widow from adopting.

⁷ See Mayne's "Hindu Law," 7th ed., p. 153.

CAPACITY TO GIVE IN ADOPTION.

The natural father ¹ can give in adoption where there is no Father. dissent by the mother, and, even in case of such dissent, the weight of authority is in favour of the father's power to give his son in adoption.

In *Narayanasami v. Kuppusami* (1887), 11 Mad. 43, at p. 47, it is said, "Where there is a competition between the father and mother, the former has a predominant interest or a potential voice."

Mr. Mayne says,² "It is quite settled that the father alone has absolute authority to dispose of his son in adoption, even without the consent of his wife, though her consent is generally sought and obtained." He cites two cases. In one (*Alank Manjari v. Fakir Chand Sarkar* (1834), 5 Ben. Sel. R. 356 (new edition, 418), the question was as to the adoptive mother's consent, which is a different question from the present one. In the other (*Chitko Raghunath Rajadiksh v. Janaki* (1874), 11 Bom. H. C. 199), the question did not arise, but (at p. 202) the Court says, "In the eye of Hindu law, when a man gives his son in adoption, he would seem to exercise a power, more like the power of an absolute proprietor than of a guardian."

Sastri G. C. Sircar³ contends that the abolition of slavery has impliedly destroyed a Hindu father's absolute dominion over his son, and concludes, "The proper view to take, therefore, seems to be that the father alone is incompetent to give when the mother is opposed to it, and that such gift is not void, but voidable only at the instance of the mother."

Nanda Pandita⁴ contends that unless the mother consents, the adoption does not affect the boy's relationship to his maternal relations. It is scarcely likely that this view would now be taken by the Courts.

A mother can, during the father's lifetime, with his consent, Mother. give her son in adoption.⁵

On the death of the father, or on his being permanently absent from home, or on his entering a religious order, or losing his reason, or otherwise becoming incapable of giving his consent,

¹ An adoptive father cannot give in adoption. See *post*, p. 143.

² "Hindu Law," 7th ed., p. 169. Strange ("Hindu Law," vol. i. p. 81) says, "As in adopting, so in giving in adoption, though the concurrence of parents is desirable, the husband appears, by the weight of authority, to be independent of the wife, the father of the mother." See "Dattaka Mimansa," s. 4, paras. 10, 11, 13-15, 17 (see also s. 1, paras. 15, 16); s. 5, para. 14, and note, and s. 6, paras. 50, 51; "Mitakshara," chap. i. s. 11, para. 9; Colebrooke's "Digest," vol. iii. pp. 244, 254, 257,

261; "Vijamitrodaya," chap. ii. • part ii. s. 8 (G. C. Sircar's translation), p. 115; "Dattaka Chandrika," s. 1, paras. 31, 32. *Contrâ*, see "Mitakshara," chap. i. s. 11, para. 9, note; Sutherland's "Synopsis," note 9 (p. 224); "Vyavahara Mayukha" (Mandlik's edition), p. 50.

³ Sircar's "Law of Adoption," pp. 274, 275.

⁴ "Dattaka Mimansa," vi. 50, 51. See *post* p. 132.

⁵ *Lallubhai Bapubhai v. Mankuwarbhai* (1876), 2 Bom. 388, at pp. 404, 405; Sircar's "Law of Adoption," p. 276.

a mother can give her son in adoption,¹ provided that the father has neither expressly nor impliedly prohibited her from so doing.²

Circumstances of parent immaterial.

The power to give in adoption is not limited to a season of distress, nor is it affected by the possession of means by the giver.³ Her right is said to arise from the maternal relation, and not by delegation from her husband⁴

No one else can give.

Under no circumstances can any one other than the father or mother give a boy in adoption.⁵

A stepmother,⁶ a brother,⁷ and a paternal grandfather,⁸ have no power to give in adoption.

¹ *Jogesh Chandra Banerjee v. Nrityakali Debi* (1903), 30 Calc. 965. S. C. *sub nom. Jogesh Chunder Bandopadhyaya v. Jonabali Bepari*, 7 C. W. N. 871; *Rangubai v. Bhagirthibai* (1877), 2 Bom. 377, at p. 380; *Mhal-sabai v. Vithoba Khandappa Gulve* (1862), 7 Bom. H. C. App. xxvi; *Hurra Soondree Dassee v. Chunder-money Dassee*, Sev. 938; *Arnachellum Pillay v. Iyasawmy Pillay* (1817), 1 Mad. Sel. Dec. 154; 1 Norton, L. C. 90. (In that case the kinsmen assented, but such assent was not considered necessary in *Narayanasami v. Kuppusami* (1887), 11 Mad. 43, at p. 47, or in *Gurulingaswami v. Ramalakshamma* (1894), 18 Mad. 53, at p. 58). "Mitakshara," chap. i. s. 11, para. 9. See "Manu," chap. ix. para. 168. As to Jains, see *Aharji Kunwar v. Rup Chand* (1908), 30 All. 197; S. C. on appeal *Rup Chand (Lala) v. Jambu Parashad* (1910), 37 I. A. 93; 32 All. 247; 14 C. W. N. 545; 12 Bom. L. R. 402.

² *Rangubai v. Bhagirthibai* (1877), 2 Bom. 377; *Narayanasami v. Kuppusami* (1886), 11 Mad. 43, at pp. 47, 48. See *Tarini Charan Chowdhry v. Saroda Sundari Dasi* (1869), 3 B. L. R. A. C. 145, at p. 160; 11 W. R. C. R. 498, at p. 476; *Gurulingaswami (Sri Balusu) v. Ramalakshamma (Sri Balusu)* (1899), 26 I. A. 113, at p. 128; 22 Mad. 398, at p. 408; 3 C. W. N. 427, at pp. 436, 437; 1 Bom. L. R. 226. See S. C. in Court below, *Gurulingaswami v. Ramalakshamma* (1894), 18 Mad. 53, at pp. 58, 59. Sir G. D. Banerjee ("Law of Marriage,"

2nd ed., p. 167) says that except in Southern India a mother can only give in adoption with the consent of her husband, and relies on "Manu," chap. ix. para. 168, "Dattaka Mimansa," s. 1, para. 15, and "Dattaka Chandrika," s. 1, para. 31. See, however, "Dattaka Chandrika," s. 1, para. 32.

³ The precepts prohibiting a gift except in time of distress are not rules of law. See "Manu," chap. ix. para. 168; "Dattaka Mimansa," s. 4, paras. 19, 20; "Mitakshara," chap. i. s. 11, para. 10.

⁴ *Pullabai v. Mohadu* (1908), 33 Bom. 107; 10 Bom. L. R. 1134; "Mitakshara," chap. i. s. 11, paras. 9, 10; "Manu," chap. ix. para. 168; "Yajnavalkya," ii., 130; Mandlik's "Hindu Law," p. 148.

⁵ *Ibid.* See "Vasistha," xv. ss. 2, 5; Colebrooke's "Digest," vol. iii. p. 242; "Manu," chap. ix. para. 168; *Lakshmappa v. Ramaya* (1875), 12 Bom. H. C. 362, at p. 376.

⁶ *Papamma v. V. Appa Rau* (1893), 16 Mad. 384.

⁷ *Tara Muneeb Dibia (Mussummaut) v. Dev. Narayun Rai* (1824), 3 Ben. Sel. R. 387 (2nd edition, 516); *Moorthosawmy Naidu v. Lutchmydavummah*, Mad. Dec. 1852, p. 96; Norton L. C. i. 66 (differing from *Veerapermall Pillay v. Narain Pillay* (1801), 1 Mad. N. C. 78, at p. 109); "Vyavastha Darpana," 825.

⁸ *Collector of Surat v. Dhursingji Vaghbaji* (1873), 10 Bom. H. C. 235. See *Kenchava v. Ningupa* (1867), 10 Bom. H. C. 265, note.

The power to give a son in adoption cannot be delegated to any person;¹ but a father or mother may authorize another person to perform the physical act of giving a son in adoption to a named person.²

Delegation of right.
Delegation of act of giving.

It is not settled whether a minor father or mother can give his or her son in adoption.

Gift of son by minor.

The Hindu law books do not expressly prohibit a minor from giving a son in adoption.³ This is probably for the reason that the event would be unlikely to occur. The question apparently stands upon the same footing as the capacity to take in adoption,⁴ and, at any rate, a father who has not attained the age of discretion⁵ would apparently be incompetent to give his son in adoption. As a Hindu minor⁶ cannot make a will, and apparently cannot appoint a testamentary guardian,⁷ it would seem unlikely that he would have power to dispose of a child, in respect of whose custody after his death he could make no provision.

There seems no reason why an adult father could not give to his minor widow power to dispose of his son in adoption.

It has been held that a Hindu father, at any rate if he is not a Brahmin, does not lose his capacity to give his son in adoption by reason of his conversion to Mahomedanism.⁸

Abandonment of Hinduism.

In the case referred to the child had remained a Hindu. If the child also had become a Mahomedan, the Hindu law of adoption would have been inapplicable. In spite of the above decision, there is a question whether a father, who has by his conversion adopted a system of law which does not recognize the adoption of sons, can retain a portion of the system which he has repudiated.⁹ Act XXI. of 1850 merely destroys the effect of any law or usage which inflicts a forfeiture of rights or property upon persons changing their religion. In this case the forfeiture, if it can be so described, does not arise from any law or usage. There is, it is submitted, an abandonment of a right, by virtue of the voluntary assumption of other rights which are inconsistent with such right. The above decision is based upon authorities which deal with the right of custody, which is a right known both to the system abandoned and the system adopted.

¹ *Bhagvandas Tejmal v. Rajmal* (1873), 10 Bom. H. C. 241; *Bashettiappa v. Shivalingappa* (1873), 10 Bom. H. C. 268.

² *Shamsing v. Santabai* (1901), 25 Bom. 551; 3 Bom. L. R. 89; *Jamnabai v. Raychand Nahalchand* (1883), 7 Bom. 225; *Vijayarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at p. 257.

³ G. C. Sircar's "Law of Adoption," 1888, p. 371.

⁴ *Ante*, pp. 102, 103.

⁵ *Ante*, p. 103.

⁶ That is, a minor within the meaning of the Indian Majority Act (IX. of 1875).

⁷ *Post*, p. 207.

⁸ *Shamsing v. Santabai* (1901), 25 Bom. 551; 3 Bom. L. R. 89.

⁹ See *Jowala Buksh v. Dharum Singh* (1866), 10 M. I. A. 511, at p. 537; *Abraham v. Abraham* (1863), 9 M. I. A. 199, at p. 243; 1 W. R. P. C. 1, at p. 5.

A father who has become a Brahmo does not lose his right to give his son in adoption.¹

Remarriage of
widow.

Where the father has given permission, a mother who has remarried can give her son in adoption, whether or not she belongs to a caste in which remarriage is customary.²

When the father has not given such permission it is unsettled whether she can give in adoption. In one case³ it was said that she has such power and in another case⁴ the power was denied. If a woman could be said to be acting as agent for her husband,⁵ she would undoubtedly lose her power by her remarriage; but the mother's right is said to arise from her maternal relation, and not from any idea of agency.⁶ The texts of Hindu law did not contemplate remarriage. The Hindu Widows' Remarriage Act,⁷ in some cases deprived her of her rights of guardianship, but it does not deprive a widow of any rights except in the matters provided in the Act. As a mother would not lose her right by loss of caste, or, it is submitted, necessarily by a change of religion,⁸ it is submitted that she does not lose her right by remarriage.

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WHO MAY BE TAKEN IN ADOPTION.

Identity of
class.

The boy must belong to the same primary caste as that of his adoptive father.⁹

For instance, a Brahmin cannot adopt a Kshatriya or a Sudra.

The reason for this rule is that the adoptive father could not have married the natural mother, when a virgin, as she belonged to a different class.¹⁰

There seems to be nothing to prevent an adoption of a boy belonging to a different subdivision of the Sudra class,¹¹ as the weight of authority

¹ *Kusum Kumari Roy v. Satyaranjan Das* (1903), 30 Calc. 199; 7 C. W. N. 784.

² *Putlabai v. Mahadu* (1908), 33 Bom. 107; 10 Bom. L. R. 1134; *Panchappa v. Sanganasawa* (1899), 24 Bom. 89; 1 Bom. L. R. 543.

³ *Putlabai v. Mahadu* (1908), 33 Bom. 107; 10 Bom. L. R. 1134.

⁴ *Panchappa v. Sanganasawa* (1899), 24 Bom. 89; 1 Bom. L. R. 545.

⁵ See "Dattaka Chandrika," s. 1, para. 31.

⁶ *Ante*, p. 130.

⁷ Act XV. of 1856, s. 3, *post*, pp. 210, 211.

⁸ See *ante*, p. 131.

⁹ See Mayne's "Hindu Law," 7th ed., pp. 177, 178; "Manu," chap. ix. para. 168; "Mitakshara," chap. i.

s. 11, para. 9; "Vyavahara Mayukha," chap. v. s. 5, para. 4; "Dattaka Mimansa," s. 2, paras. 22, 23-25; "Dattaka Chandrika," s. 1, paras. 12-16. See G. C. Sircar's "Law of Adoption," pp. 165, 357, 358.

¹⁰ See *post*, p. 133.

¹¹ Decision of the Calcutta High Court in Regular Appeals, 274, and 322 of 1886, referred to in G. C. Sircar's "Law of Adoption," p. 165; see also pp. 357, 358, of the same work. See, however, Sutherland's "Synopsis," head. 2, para. 1; "Dattaka Mimansa," s. 2, paras. 35, 74-78, s. 3, paras. 1-3. It has been held that a Tilari (an inferior Lingayat) may adopt a boy who is a Kulwadi: *Jukaram v. Babaji* (1899), 1 Bom. L. R. 144.

is in favour of the legality of a marriage between persons belonging to different subdivisions of that class.¹

No boy has a preferential or any right to be adopted, and there is nothing to prevent the adoption of a stranger, even though there be a near relation qualified for adoption. No preferential right.

The texts which prescribe the preferential adoption of a *sapinda* have not the force of law.²

It has been laid down that among the three twice-born classes, no one whose mother, when she was a virgin,³ the adoptive father (or the husband of a widow taking a boy in adoption), was by reason of propinquity barred from legally marrying, can be adopted,⁴ but it is submitted that the prohibition should be confined to the sister's son, daughter's son, and mother's sister's son.⁵ Relationship of adoptive father to natural mother.

This rule in its present form was first enunciated by Mr. Sutherland in his "Synopsis."⁶ He deduced this rule from a rule which had reference to the obsolete practice of *niyoga*, which, when used in this sense, means the appointment of a kinsman to raise up issue by the wife of a childless husband, or of one deceased without leaving children.⁷

A text of Saunaka⁸ requires the boy adopted to bear "the reflection

¹ *Ante*, p. 34.

² *Uma Deyi (Srimati) v. Gokoolanund Das Mahapatra* (1878), 5 I. A. 40; 3 Calo. 587; 2 C. L. R. 51. S. C. in Court below, *Gocoolanund Das v. Wooma Dace* (1875), 15 B. L. R. 405; 23 W. R. C. R. 340; *Dhgrma Dagu v. Ramkrishna Chinnaji* (1885), 10 Bom. 80; *Babaji Jivaji v. Bhagirthibai* (1869), 6 Bom. H. C. A. C. 70.

³ See *Sriramulu v. Ramayya* (1881), 3 Mad. 15.

⁴ *Minakshi v. Ramanada* (1887), 11 Mad. 49. (In this case the prohibition was laid down as a general rule of Hindu law without reference to any distinction between the twice-born classes and Sudras, but the judgment is based upon considerations inapplicable to Sudras.) *Gopal Narhar Safray v. Hanmant Ganesh Safray* (1879), 3 Bom. 273; *Bhagirthibai v. Radhabai* (1879), 3 Bom. 298; *Jivani Bhai v. Jivu Bhai* (1865), 2 Mad. H. C. 462. See also judgment of Banerjee, J., in *Bhagwan Singh v.*

Bhagwan Singh (1895), 17 All. 294; *Haran Chunder Banerji v. Hurro Mohun Chuckerbutty* (1880), 6 Calc. 41, at p. 47; 6 C. L. R. 393, at p. 398; *Vyas Chimanlal v. Vyas Ramchandra* (1899), 24 Bom. 473; 2 Bom. L. R. 163.

⁵ See *Ramchandra v. Gopal* (1908), 32 Bom. 619; 10 Bom. L. R. 948, *post*, p. 135.

⁶ Stokes' "Hindu Law Books," p. 664. As to the rules of exclusion by reason of propinquity in the case of marriage, see *ante*, pp. 34-39. Where the adopting father has himself been removed from his natural family by adoption this rule would debar him from adopting the son of a woman whom he could not have married before being so removed, and also the son of one whom he could not have married after having been so removed. See Mad. Dec. of 1858, p. 117.

⁷ Wilson's "Glossary," p. 380.

⁸ "A *rishi* of unquestioned authority."

of a son." Nanda Pundita¹ in construing this text, held that the resemblance must consist in "the capability to have sprung from (the adopter) himself, through an appointment (to raise up issue on another's wife), and so forth,"² as (in the case) of the son, of a brother, a near or distant kinsman, and so forth."

As the practice of *niyoga* is now obsolete,³ the rules by which it was regulated in respect of the person selected for appointment are not, as such, now used for the purpose of testing the capability of the person to be adopted, but in their place the rules as to the prohibited degrees in the case of marriage have been substituted.

The two sets of rules have been held not to conflict,⁴ but they do not appear to completely coincide.⁵ "Prohibited connection in the case of marriage has reference to the relationship in which the couple between whom marriage is proposed stand, irrespective of marriage, and when the girl selected for marriage is a maiden. But prohibited connection in the case of *niyoga* has reference to the relationship between a married woman and the person who is appointed to beget a child upon her. . . . The rules of prohibited connection had a common object in both cases, viz. the prevention of incest.

In the case of marriage, there are three prohibitions,⁶ viz.—

(i.) The couple between whom marriage is proposed should not be *sapindas* :

(ii.) They should not be *sagotras* ; and

(iii.) There should be no *Viraddha Sanbandha* or contrary relationship, that is, such relationship as would render sexual connection between them incestuous. This contrary relationship is defined as consisting in the couple being so related to each other that by analogy the one is the father or the mother of the other, as, for instance, the daughter of the wife's sister and the sister of the paternal uncle's wife."⁷

According to the *niyoga* rule, "The relations prohibited for adoption by a man are : the paternal uncle, the maternal uncle, the brother, the four first cousins on paternal and maternal side, the brother-in-law, the sister's son, and the daughter's son."⁸ Of these the father's brother's son, and the mother's brother's son,⁹ would not be excluded by the marriage rules.

Whatever may have been the origin of the rule prohibiting the adoption

¹ "Dattaka Mimansa," s. 5, para. 16.

² "The phrase 'so forth' is explained to refer to a legal marriage having been possible between the adopter and the mother of the boy fixed for adoption." *Sriramulu v. Ramayya* (1881), 3 Mad. 15, at p. 16.

³ See *ante*, p. 96.

⁴ *Minakshi v. Ramanada* (1887), 11 Mad. 49, at p. 54. See also *Bhagwan Singh v. Bhagwan Singh* (1895), 17 All. 294, at p. 322. (In the appeal in this case (1899), 26 I. A. 153; 21 All. 412; 3 C. N. W.

454, 1 Bom. L. R. 311, this view was not disturbed.)

⁵ See Bhattacharya's "Hindu Law," 2nd ed., p. 169.

⁶ *Ante*, pp. 34-40.

⁷ *Minakshi v. Ramanada* (1887), 11 Mad. 49, at p. 53. Marriage between a Hindu and the daughter of his wife's sister was held to be valid in *Ragavendra Rau v. Jayaram Rau* (1897), 20 Mad. 283.

⁸ G. C. Sircar's "Law of Adoption," p. 322, and see preceding pages.

⁹ See *Virayya v. Hanumanta* (1890), 14 Mad. 459, at p. 461.

of a boy, whose mother the adoptive father could not have married, it has been held in Madras that the Courts cannot now go behind it and test the validity of an adoption by the rules which governed the obsolete system of *niyoga*.¹

It remains to be seen whether the Judicial Committee will, when it becomes necessary to lay down a general rule on this subject, accept the rule of prohibited degrees in marriage laid down in India, or will accept the *niyoga* rule, enunciated in the "Dattaka Mimansa," or will confine the prohibitions to the three cases which have hitherto been considered by the Committee,² viz. those of the sister's son, daughter's son, and mother's sister's son. These are the only cases specified by the sages Saunaka and Sakala,³ from whose texts Nanda Pandita, in the "Dattaka Mimansa," based the *niyoga* test of exclusion.

The Bombay High Court confines the prohibitions to sister's son, daughter's son, and mother's sister's son.⁴ This view is, it is submitted, the preferable one.

The high authority of the "Dattaka Mimansa"⁵ might possibly give a preference to the *niyoga* test of exclusion; but with regard to the analogy between the *Dattaka* form of adoption and this obsolete practice the Judicial Committee has said,⁶ "as a ground for judicial decision these speculations are inadmissible, though as explanatory arguments to account for an actual practice they may be deserving of attention."

The burden of proving a special custom to the contrary amongst any members of these three classes, prevalent, either in their caste, or in a particular locality, lies upon him who avers the existence of that custom.⁷

In the following cases, which fall within the above-mentioned rule, adoptions have been held to be invalid. Instances of application of rule.

(a) Daughter's son.⁸

¹ See *Virayya v. Hanumanta* (1890), 14 Mad. 459, at p. 461.

² *Bhagwan Singh v. Bhagwan Singh* (1899), 26 I. A. 153; 21 All. 412; 3 C. W. N. 454.

³ As to the construction of Sakala's text, see *Walbai v. Heerbai* (1909), 34 Bom. 491, at p. 495; 11 Bom. L. R. 1172.

⁴ *Ramchandra v. Gopal* (1908), 32 Bom. 619; 10 Bom. L. R. 948.

⁵ *Bhagwan Singh v. Bhagwan Singh* (1899), 26 I. A. 153, at p. 161; 21 All. 412, at p. 419; 3 C. W. N. 454, at p. 457; 1 Bom. L. R. 311; *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at pp. 435, 437; 1 B. L. R. P. C. 1, at pp. 11, 13; 10 W. R. P. C. 17, at pp. 21, 22; *Waman Raghupati Bova v. Krishnaji Kashiraj Bova* (1889), 14 Bom. 249, at p. 259 *Uma Sunker Moitra v. Kali Komul Mozumdar*

(1880), 6 Calc. 256, at p. 265; 7 C. L. R. 145, at p. 154; *Rajendro Narain Lahoree v. Saroda Soonduree Dabee* (1871), 15 W. R. C. R. 548.

⁶ *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868), 12 M. I. A. 396, at p. 441; 1 B. L. R. P. C. 7, at p. 16; 10 W. R. P. C. 17, at p. 23; *Raghunadha (Sri) v. Brozokishoro (Sri)* (1876), 3 I. A. 154, at p. 190; 1 Mad. 60, at p. 80; 25 W. R. C. R. 291, at pp. 301, 302.

⁷ *Gopal Narhar Safray v. Hammont Ganesh Safray* (1879), 3 Bom. 273, at pp. 296, 297. See *Vayidinada v. Appu* (1885), 9 Mad. 44, at pp. 45, 46; *Minakshi v. Ramanada* (1887), 11 Mad. 49, at p. 55; *Lali v. Murlidhar* (1901), 24 All. 195, at p. 205.

⁸ *Bhagwan Singh v. Bhagwan Singh* (1899), 26 I. A. 153, at p. 160; 21 All. 412, at p. 418; 3 C. W. N. 454, at p. 456; 1 Bom. L. R. 311; *Gopal*

Brahmins in the Tanjore, Trichinopoly, and Tinnevely districts, by custom, adopt daughter's sons.¹ There seems to be a similar custom among the Nambudri Brahmins of Malabar,² and it has been held³ that in the Southern Mahratta country the prohibition of the adoption of a daughter's son is not universally in force. In the Punjab there is frequently such a custom.⁴

(b) Sister's son.⁵

By custom, Brahmins in the Tanjore, Trichinopoly and Tinnevely districts,⁶ the Bohra Brahmins of the northern districts of the North-western Provinces,⁷ and the Nambudri Brahmins of Malabar,⁸ and Saraswat Brahmins of Kanara⁹ adopt sister's sons. It has also been held that

Narhar Safray v. Hanmant Ganesh Safray (1879), 3 Bom. 273; *Bhagirthibai v. Radhabai* (1879), 3 Bom. 298; *Jivani Bhai v. Jivu Bhai* (1865), 2 Mad. H. C. 462, at pp. 467, 468.

¹ *Vayidinada v. Appu* (1885), 9 Mad. 44.

² See *Vishnu Nambudri (Eranjoli Illath) v. Krishnan Nambudri (Eranjoli Illath)* (1883), 7 Mad. 3.

³ *Nani (Bai) v. Chunulal* (1897), 22 Bom. 973, at p. 976.

⁴ See *Rup Narain v. Gopal Devi* (1909), 36 I. A. 103; 36 Calc. 780; 13 C. W. N. 920; 10 Bom. L. R. 833.

⁵ *Bhagwan Singh v. Bhagwan Singh* (1899), 26 I. A. 153, at p. 160; 21 All. 412, at p. 418; 3 C. W. N. 454, at p. 456; 1 Bom. L. R. 311; *Lali (Mussammat) v. Murlu Dhar* (1906), 33 I. A. 97; 28 All. 488; 10 C. W. N. 730; *Narain Das (Lala) v. Ramanuj Dayal (Lala)* (1897), 25 I. A. 46, at p. 52; 20 All. 209, at p. 217; 2 C. W. N. 193, at p. 195; *Sundar (Mussammat) v. Parbati (Mussammat)* (1889), 16 I. A. 186, at p. 193; 12 All. 51, at p. 56. S. C. in Court below, *Parbati v. Sundar* (1885), 8 All. 1; *Rajecoomar Lall v. Bissessur Dyal* (1884), 10 Calc. 688, at p. 693; *Narasammal v. Balaramachariu* (1863), 1 Mad. H. C. 420; *Gopalayyan v. Raghupatiayyan* (1873), 7 Mad. H. C. 250; *Kora Shunko Takoor (Doe dem) v. Munnee (Beebe)* (1815), East's notes, case 20; Morl. Dig. vol. i. p. 18; *Shiblall v. Bishumber*, S. D. A. N. W. P. 1886, p. 25. In *Ramalinga Pillai v. Sadasiva Pillai* (1864), 9 M. I. A. 510; 1 W. R. P. C. 25, the adoption of a sister's son was

upheld. The parties were said in the report to be Vaisyas. The question as to the validity of the adoption was raised, but the case was determined on the ground that the title of the respondent was admitted by the appellant's father. In *Jivani Bhai v. Jivu Bhai* (1865), 2 Mad. H. C. 462, at p. 467, it was asserted that the parties to the case of *Ramalinga Pillai* were clearly Sudras. See also *Gopal Narhar Safray v. Hanmant Ganesh Safray* (1879), 3 Bom. 273, at pp. 282, 283. In *Ganpatrav Vireshyar v. Vithoba Khandappa* (1867), 4 Bom. H. C. A. C. 130, the adoption of a sister's son was upheld, but the parties were evidently Sudras (see *Gopal Narhar Safray v. Hanmant Ganesh Safray* (1879), 3 Bom. 273, at p. 282). In *Bhagwan Singh v. Bhagwan Singh* (1895), 17 All. 294, at p. 302, it is said that the parties in *Ganpatrav's* case were Vaisyas, but that the Court erred in supposing that the parties in *Ramalinga Pillai's* case were other than Sudras.

⁶ *Vayidinada v. Appu* (1885), 9 Mad. 44.

⁷ *Chain Sukh Ram v. Parbati* (1891), 14 All. 53. In an Agra case (*Lali v. Murlidhar* (1901), 24 All. 195, at pp. 197, 205), an unsuccessful attempt was made to prove that a Bohra Brahmin could adopt his sister's son.

⁸ *Vishnu Nambudri (Eranjoli Illath) v. Krishnan Nambudri (Eranjoli Illath)* (1883), 7 Mad. 3.

⁹ *Manjunath v. Kaveribai* (1902), 4 Bom. L. R. 140.

in the Southern Mahratta country the prohibition of the adoption of sister's sons is not universally in force.¹

It has been held that a sister's daughter's son would be inadmissible for adoption.²

Such adoption is permissible in the Telegu and Tamil country where a marriage between a maternal uncle and his niece is allowed.³

(c) Mother's sister's son.⁴

(d) The son of the daughter of a *sagotra*.⁵

It seems that the adoptions of the following are prohibited, not by the marriage rule, which is inapplicable, but by express authority, viz. :—

(i.) Brother.⁶

In the Deccan the adoption of a younger brother is permitted.⁷

(ii.) Stepbrother.⁸

(iii.) Paternal and maternal uncles.⁹

Having regard to the prohibition as to the age¹⁰ of the adopted son, this case is unlikely to occur except, perhaps, in Western India.¹¹

It has been held that the adoptions of the following persons are permissible, except in the case where the natural mother of the boy happens to be a person whom, as a virgin, the adoptive father could not lawfully have married.

(a) Brother's son's son.¹²

¹ *Nani (Bai) v. Chunilal* (1897), 22 Bom. 973, at p. 976.

² *Venkata v. Subhadra* (1884), 7 Mad. 548, at p. 549. As to a half-sister's daughter's son, see *Karunabdi Ganesa Ratnamayyar v. Gopala Ratnamayyar* (1889), 7 I. A. 173, at p. 177; 2 Mad. 270, at p. 279.

³ *Venkata v. Subhadra* (1884), 7 Mad. 548, at p. 549.

⁴ *Bhagwan Singh v. Bhagwan Singh* (1899), 26 I. A. 153; 21 All. 412; 3 C. W. N. 454; *Walbai v. Heerbai* (1909), 34 Bom. 491; 11 Bom. L. R. 1172.

⁵ *Minakshi v. Ramanada* (1887), 11 Mad. 49. See, however, *Ragavendra Rau v. Jayaram Rau* (1897), 20 Mad. 283, at p. 289, and *ante*, p. 34.

⁶ *Sriramulu v. Ramayya* (1881), 3 Mad. 15, at p. 16. See *Runjeet Singh (Baboo) v. Ojha Narain Singh* (1817),

2 Ben. Sel. R. 245 (2nd edition, 315); "Dattaka Mimansa," s. 5, para. 17. The *nyoga* rule (*ante*, p. 134) excluded brothers and step-brothers.

⁷ See *Huebut Rao Mankur v. Govind Rao Balvunt Rao Mankur* (1821), 2 Borr. 75, at p. 85; Steele, 44.

⁸ *Sriramulu v. Ramayya* (1881), 3 Mad. 15, at p. 16.

⁹ *Haran Chunder Banerji v. Hurro Mohun Chuckerbutty* (1880), 6 Calc. 41, at p. 47; 6 C. L. R. 393, at p. 398; "Dattaka Mimansa," s. 5, para. 17; Sircar's "Law of Adoption," p. 327; Macnaghten's "Hindu Law," vol. i. p. 67.

¹⁰ *Post*, p. 141.

¹¹ *Post*, p. 141.

¹² *Haran Chunder Banerji v. Hurro Mohun Chuckerbutty* (1880), 6 Calc. 41, at p. 48; 6 C. L. R. 393, at p. 400; *Morun Moe Debeah v. Bejoy*

Prohibition based upon *nyoga* rule.

Instances where rule does not apply.

(b) Paternal uncle's son.¹

(c) Paternal uncle's son's son's son.²

There can equally be no objection to the adoption of a paternal uncle's son's son.³

(d) The son of the mother's father's brother's daughter's daughter.⁴

(e) The wife's brother.⁵

(f) The wife's brother's son.⁶

(g) The wife's sister's son.⁷

Sudras.

The rule as to the relationship between the adopting father and the natural mother⁸ has no application to Sudras.⁹

Relationship
of adopting
mother to
natural father.

Relationship between the adopting widow, or the wife of the

Kishto Gossamee (1863), W. R. Sp. No. 121.

¹ *Virayya v. Hanumanta* (1891), 14 Mad. 459; an unreported decision of the High Court of Bengal referred to in Sircar's "Law of Adoption," p. 340. The paternal uncle's son is excluded by the *niyoga* rule of exclusion (*ante*, p. 134).

² *Haran Chunder Banerji v. Hurro Mohun Chuckerbutty* (1880), 6 Calc. 41, at p. 47; 6 C. L. R. 393, at p. 399.

³ In *Venkata v. Subhadra* (1884), 7 Mad. 548, the boy was the son of the paternal uncle's son, but no objection was made to the adoption on this ground. Such adoption is said even to be commendable. Sircar's "Law of Adoption," p. 348.

⁴ *Venkata v. Subhadra* (1884), 7 Mad. 548. In this case, Sastri G. C. Sircar points out ("Law of Adoption," p. 348) that having regard to the Mitakshara system of computation of degrees, the Court was in error in considering that the adopting father could, under the general Hindu law, have married the natural mother. Such marriage seems to have been permissible by a usage to which the parties were subject.

⁵ *Krishniengar v. Vanamalai Iyengar*, Mad. Dec. of 1856, p. 213; *Runganaigum v. Namesevoya Pillay*, Mad. Dec. of 1857, p. 94; *Ruvee*

Bhudr v. Roopshunkar Shunkerjee (1823), 2 Borr. 656.

⁶ *Sriramulu v. Ramayya* (1881), 3 Mad. 15, at p. 17. See *Nani (Bai) v. Chunilal* (1897), 22 Bom. 973, at p. 979.

⁷ *Gunga (Bae) v. Sheoshunkur (Bae)* (1832), Bom. Sel. R. 73, at p. 76.

⁸ *Ante*, p. 133.

⁹ See *Bhagwan Singh v. Bhagwan Singh* (1899), 26 I. A. 153, at p. 160; 21 All. 412, at p. 418; 3 C. W. N. 454, at p. 452. In *Ramalinga Pillai v. Sadasiva Pillai* (1864), 9 M. I. A. 510; 1 W. R. P. C. 95, where the parties were Sudras, an adoption of a sister's son was upheld. The marginal note of the report erroneously describes the parties as Vaisyas (see *Jivani Bhai v. Jivu Bhai* (1865), 2 Mad. H. C. R. 462, at p. 467), but it does not appear whether the Judicial Committee were aware, that the parties were Sudras. *Nunkoo Singh v. Purn Dhun Singh* (1869), 12 W. R. C. R. 356; *Jiwan Lal v. Kallu Mal* (1905), 28 All. 170; *Rajcoomar Lall v. Bissessor Dyal* (1884), 10 Calc. 688, at p. 693; *Vayjadinada v. Appu* (1885), 9 Mad. 44, at p. 53; *Chinna Nagayya v. Pedda Nagayya*, (1875), 1 Mad. 62; *Phundo v. Janginath* (1893), 15 All. 327; *Lakshmappa v. Ramava* (1875), 12 Bom. H. C. 364.

adopting father, and the natural father of the boy is no impediment to an adoption.

This is in accordance with the views now adopted by all the High Courts at Allahabad,¹ Madras,² and Bombay.³ The question does not seem to have been decided by the High Court of Bengal.

Nanda Pandita held that a woman must not adopt her brother's son.⁴ His view was accepted in two cases.⁵ It is supported by Dr. Jogendronath Bhattacharya, who carries the rule to its logical conclusion, and in the case of an adoption by a woman excludes from adoption the sons of men between whom and her there could be no legal *niyoga* or appointment to raise issue.⁶ This is also the opinion of Sastri Gopal Chundra Sircar.⁷

There is no ground for holding that the adoption of a relation is limited to a particular generation.⁸

No restriction
as to genera-
tion.

It is said that in the Punjab no adoption is rendered invalid by any relationship between the adopting and natural parents.⁹

Punjab.

Adoptions of daughter's sons, sister's sons, brother's sons, daughter's and sister's sons, by members of twice-born classes, have been upheld in the Punjab.¹⁰

Jains are apparently not bound by any restrictions as to the relationship between adopter and adopted.¹¹

¹ *Jai Singh Pal Singh v. Bijai Pal Singh* (1904), 27 All. 417, differing on this question from *Battas Kuar (Musst.) v. Lachman Singh* (1875), 7 N. W. P. 117.

² *Sriramulu v. Ramayya* (1881), 3 Mad. 15.

³ *Nani (Bai) v. Chunilal* (1897), 22 Bom. 973 (a case from Gujarat). See *Giriwa v. Bhimaji Raghunath* (1884), 9 Bom. 58, which was a case from the Southern Mahratta country, where the prohibition of the adoption of a daughter's or sister's son is not universally in force.

⁴ "Dattaka Mimamsa," s. 2, paras. 33, 34. See Sutherland's "Synopsis." Stokes' "Hindu Law Books," p. 665.

⁵ *Battas Kuar (Musst.) v. Lachman Singh* (1875), 7 N. W. P. 117. *Dagumbaree Dabee v. Taramoney Dabee* (1818), Maonaghten's "Considerations," 179; 1 Morley's "Digest,"

19. In the latter case Nanda Pandita's rule was extended to an uncle's son.

⁶ "Commentaries on Hindu Law," 2nd ed., 166.

⁷ "Law of Adoption," p. 332.

⁸ *Haran Chunder Banerji v. Hurro Mohun Chuckerbutty* (1880), 6 Calc. 41, at p. 48; 6 C. L. R. 393, at p. 399. It was there contended that a brother's son's son could not be adopted, although a brother's son could be adopted.

⁹ See cases referred to in Sircar's "Law of Adoption," pp. 341, 342; Rattigan's "Digest," 7th ed., 56; *Rup Narain v. Gopal Devi* (1909), 36 I. A. 103; 36 Calc. 780; 13 C. W. N. 920; 10 Bom. L. R. 833.

¹⁰ Sircar's "Law of Adoption," pp. 341, 342.

¹¹ Among the Jains adoption is a mere temporal arrangement, and has no spiritual object. *Asharfi Kunwar*

Among Jains a daughter's son may be adopted.¹

Adoption from
adoptive
family.

An adopted son cannot adopt from his adoptive family a boy whom he could not have adopted if he had been a natural son of his adoptive father.²

Only son.

An only son, or any one of several sons, can be adopted.³

A widow can give her only son in adoption.⁴

There was for a long time a conflict in the Indian Courts as to whether an only son could be given in adoption,⁵ but in 1899 it was definitely settled that he could be so given. The power to adopt an elder or any one of several sons was settled much earlier.⁶

v. *Rup Chand* (1908), 30 All. 197; S. C. on appeal/*Rup Chand (Lala)* v. *Jambu Parshad* (1910), 37 L. A. 93; 32 All. 247; 14 C. W. N. 545; 12 Bom. L. R. 402; *Bhagvandas Tejmal* v. *Rajmal* (1873), 10 Bom. H. C. 241, at p. 262.

¹ *Sheo Singh Rai v. Dakho (Mussu-mat)* (1878), 5 L. A. 87; 1 All. 688; 2 C. L. R. 193; *Lakshmi Chand v. Gatto Bai* (1886), 8 All. 319; *Hassan Ali v. Naga Mal* (1876), 1 All. 288.

² See Sircar's "Law of Adoption," p. 387.

³ *Gurulingaswami (Sri Balusu)* v. *Ramalakshmanma (Sri Balusu)*, *Radha Mohun v. Hardai Bibi* (1899), 26 L. A. 113; 22 Mad. 398; 21 All. 460; 3 C. W. N. 427; 1 Bom. L. R. 226; *Vyas Chimanol v. Vyas Ramchandra* (1899), 24 Bom. 367; 2 Bom. L. R. 163.

⁴ *Krishna v. Paramshri* (1901), 25 Bom. 537, at p. 542; 3 Bom. L. R. 73, where it is said, "Now that the recent decisions have established the fact that the gift of an only son is not blamable, the implied effect ceases to be operative, and no restriction can be placed on the widow's power to make a valid gift of an only son." It was not necessary to decide in *Balusu Gurulingaswami's* case whether a widow would have power to give an only son in adoption. In *Somasek-*

hara Raja v. Subhadramaji (1882), 6 Bom. 524, following *Lakshmappa v. Ramava* (1875), 12 Bom. H. C. 364, at p. 396, it was held that an authority by the husband to give in adoption, even as a *dvyamashyayana* (*post*, pp. 184, 185), would not be implied in the case of the adoption of an only son. See also *Debee Dial v. Hur Hor Singh* (1828), 4 Ben. Sel. R. 320 (new edition, 407). The decision in *Krishna v. Paramshri* is supported by the views expressed by the Judicial Committee in *Balusu Gurulingaswami's* case, 26 L. A. at pp. 127, 128; 22 Mad. at pp. 407, 408; 21 All. at pp. 469, 470; 3 C. W. N. at pp. 436, 437; 1 Bom. L. R. 226.

⁵ For a discussion of the earlier cases on this subject, see Mayne's "Hindu Law," 6th ed., pp. 180-189; 5th ed., pp. 153-161; and Sircar's "Law of Adoption," pp. 298-306. For a discussion of the texts and the views of the commentators and other authorities, see Sircar's "Law of Adoption," pp. 282-298.

⁶ See *Seetaram v. Dhumnook Dharee Sahye* (1863), 1 Hay, 260; *Janokes Debee v. Gopaul Acharjag* (1877), 2 Calc. 365; *Jamnabai v. Raychand Nahalchand* (1883), 7 Bom. 225; *Kashibai v. Tatia* (1883), 7 Bom. 221.

According to the Bengal¹ and Benares² schools, in the case of the three higher classes the adoption must take place before the boy is invested with the sacred thread; ^{Age of boy. Bengal and Benares schools.} in the case of Sudras it must take place before marriage.⁴

An unmarried Sudra, of any age, who is in other respects qualified, can be adopted according to all the schools.⁵

In the Madras Presidency the same rules apply,⁶ except that a Brahmin boy of the same *gotra*⁷ can be adopted after the thread ceremony has been performed, but before marriage.⁸

In Western India there is no objection to the adoption of a married man even if he has children.⁹

¹ *Bullabakant Chowdree v. Kishenprea Dassee Chowdrain* (1838), 6 Ben. Sel. R. 219 (2nd ed., 270). (This was a case of Sudras.) *Ramkishore Acharj Chowdree v. Bhoobunmoyee Debea Chowdrain*, Ben. S. D. of 1859, 229, at pp. 236, 237, affirmed on review, Ben. S. D. of 1860, vol. i. 485, at p. 490. On appeal this question did not arise (*Bhoobun Moyee Debia v. Ramkishore Acharj Chowdhry* (1865), 10 M. I. A. 279; 3 W. R. (P. C.) 15). See *Kerutnaraen v. Bhoobinesree (Musummaut)* (1806), 1 Ben. Sel. R. 161, note to p. 162 (2nd ed., 213, note to p. 214). See "Dattaka Mimansa," iv. 22; "Dattaka Chandrika," ii. 25, 30 (Sutherland's note), 31. 1 W. Macnaghten, 73, note. This is disputed by G. C. Sircar ("Law of Adoption," p. 362), who contends that the investiture in the natural family is not a bar to an adoption. As to the effect of an adoption when the ceremony of tonsure has been performed in the natural family, see *post*, p. 186.

² *Ganga Sahai v. Lekhraj Singh* (1886), 9 All. 253, at p. 328. See *Rup Chand (Lala) v. Jambu Parshad* (1910), 37 I. A. 93; 32 All. 247; 14 C. W. N. 545; 12 Bom. L. R. 402.

³ As to the age for such investiture, see Colebrooke, note to "Dattaka Mimansa," s. 4, para. 23; Colebrooke's "Digest," vol. iii. p. 104.

⁴ *Bullabakant Chowdree v. Kishenprea Dassee Chowdrain* (1838), 6 Ben.

Sel. R. 219 (2nd ed., 270); *Nitradaye (Ranee) v. Bholanath Doss*, Ben. S. D. A. 1853, p. 553; "Dattaka Chandrika," ii. 29, 32; Strange's "Hindu Law," vol. i. p. 91.

⁵ See *Pappamma v. V. Appa Rau* (1893), 16 Mad. 384, at pp. 396, 397, in which case the Court considered that the adoption of an unmarried man of over forty years of age would not be invalid on the mere ground of age.

⁶ *Pichuvayyan v. Subbayyan* (1889), 13 Mad. 128; *Chetty Culum Prasanna Vencatachella Reddyar v. Chetty Culum Moodoo Vencatachella Reddyar*, Mad. S. D. A. 1823, p. 406; *Sevagamy Nachiar v. Mooto Vizia Raghoonadha Satoopathy*, *ibid.* p. 101. Strange's "Hindu Law," vol. i. pp. 87-91; cases in vol. ii. at pp. 87, 102, 109, 110; *Sreencvassen v. Sashyummal*, Mad. Dec. of 1859, 118; *Veerapermall Pillay v. Narain Pillay* (1801), 1 Mad. N. C. 78. See *Vythilinga Muppanar v. Vijayathammal* (1882), 6 Mad. 43. As to Sudras, see *Pappamma v. V. Appa Rau* (1893), 16 Mad. 384, at p. 396.

⁷ As to the meaning of "*gotra*," see *ante*, p. 35.

⁸ *Viraragava v. Ramalinga* (1883), 9 Mad. 148; *Pichuvayyan v. Subbayyan* (1889), 13 Mad. 128. See *P. Venkatesaiya v. Venkata Chariu* (1866), 3 Mad. H. C. 28.

⁹ *Mahsabat v. Vithoba Khandappa Gulve* (1862), 7 Bom. H. C. App.

It has been held that a married Sudra of a different *gotra* can be adopted,¹ and the adoption of a married Brahmin of a different *gotra*, having children at the date of his adoption has been upheld.² When he is of the same *gotra* it follows that there can be no objection.³

Difference of age between boy and adopter.

The rule of Hindu law requiring a difference of age between the adoptive father or mother and the boy,⁴ is apparently merely directory.⁵

If a boy, eligible in other respects, upon whom the ceremonies of *chudakarma* (tonsure) and *upanayana* (investiture with the sacred thread) have not been performed in his natural family, can be obtained, he should be preferred, but the fact that such ceremonies have been performed does not invalidate the adoption.⁶

Punjab.

In the Punjab there is no limit of age, and the performance of the thread ceremony or of marriage in the family does not invalidate the adoption.⁷

Jains.

Among Jains there is no limit of age,⁸ and a married man may be adopted.⁹ In a case of Agarwala Jains,¹⁰ who belong to the twice-born classes, the Privy Council upheld an adoption of a married man, but pointed out that the custom would have to be proved in each case.

Orphan.

An orphan, whether he be a minor or an adult, cannot be adopted.¹¹

This follows from the rule that only a father or mother can give in adoption.¹²

xxvi. See *Sadashiv Moreswar Ghate v. Hari Moreswar Ghate* (1874), 11 Bom. H. C. 190. As to the effect of the adoption upon the rights of his children, see *post*, pp. 172, 184.

¹ *Laksmappa v. Ramava* (1875), 12 Bom. H. C. 364. See also *Nathaji Krishnaji v. Hari Jagoji* (1871), 8 Bom. H. C. (A. C.), 67.

² *Dharma Dagv v. Ramkrishna Chimnaji* (1885), 10 Bom. 80. See also *Laksmappa v. Ramava* (1875), 12 Bom. H. C. 364, at pp. 371, 373.

³ See *Brijbhokunjee Muharaj (Sree) v. Gokoolootsaojee Muharaj (Sree)* (1816), 1 Borr. 181, at p. 195, where the adoption of a married Brahmin of 45 years of age belonging to the same *gotra* was upheld.

⁴ Steele, pp. 44, 182; V. N. Mandlik, p. 471.

⁵ *Gopal Balkrishna Kenjale v. Vishnu Raghunath Kenjale* (1898), 23 Bom. 250, at p. 257.

⁶ *Dharma Dagv v. Ramkrishna Chimnaji* (1885), 10 Bom. 80; *Laks-*

mappa v. Ramava (1875), 12 Bom. H. C. 364, at p. 370.

⁷ In *Makkan v. Nikka*, Punjab Records of 1868, case No. 37, p. 96, the Chief Court upheld the adoption of a man of the age of 30.

⁸ *Govindnath Roy (Maharajah) v. Gulal Chand* (1833), 5 Ben. Sel. R. 276 (new edition, 322); *Rithcurn Lalla v. Soojun Mull Lallah*, 9 Mad. Jur. 21, referred to in *Sheo Singh Rai v. Dakho (Mussumat)* (1874), 6 N. W. P. 382, at p. 402.

⁹ *Manohar Lal v. Banarsi Das* (1907), 29 All. 495.

¹⁰ *Rup Chand (Lala) v. Jambu Parshad* (1910), 37 I. A. 93; 32 All. 247; 14 C. W. N. 545; 12 Bom. L. R. 402.

¹¹ *Subbaluammal v. Ammakutti Ammal* (1864), 2 Mad. H. C. 129; *Balvantrav Bhaskar v. Bayabai* (1869), 6 Bom. H. C. O. J. 83; *Bashetiappa v. Shivilingappa* (1873), 10 Bom. H. C. 268.

¹² *Ante*, p. 130.

A boy who has been taken in adoption, cannot be taken again in adoption.¹

Two persons, even if they are brothers, cannot take the same person in adoption, either at the same time² or at different times.³

Where a boy is disqualified by personal defects from inheriting, it is not settled whether he can be adopted. Apparently he cannot.⁴

A defect which would attach to the boy in consequence of a fault on the part of his parents would not operate as a disqualification.⁵

There is no objection to the adoption of the Brahmo son of a Brahmo.⁶ Brahmo.

The simultaneous adoption of two or more sons is invalid as to all.⁷

The practice of simultaneous adoptions of two or more sons seems to have been prevalent in Bengal after 1846, and to have owed its origin to the ingenuity of Hindu lawyers, who attempted thereby to evade the effect of the decision of the Privy Council in *Rungama v. Atchama*,⁸ in which an adoption during the lifetime of a previously adopted son was declared void.⁹

It may in some cases be difficult to determine whether the adoptions were simultaneous, and, therefore, both void, or merely successive, in which case the latter only would be void. In *Siddessory Dassee v. Doorga-churn Sett*,¹⁰ Phear, J., said, "But, moreover, on that occasion, the

¹ G. C. Sircar's "Law of Adoption," pp. 281, 282. See "Dattaka Mimansa," s. 1, para. 30; s. 2, paras. 40-47.

² *Rajcoomar Lall v. Bissessur Dyal* (1884), 10 Calc. 688, at pp. 696, 697. W. Macnaghten's "Hindu Law," vol. i. p. 77. Mayne's "Hindu Law," 7th ed., p. 193. "The Hindu law is . . . silent upon the point and contains no rule one way or the other," Sircar's "Law of Adoption," p. 306.

³ Above, note 1.

⁴ Sutherland in his "Synopsis"; Stokes' "Hindu Law Books," p. 665, says, "It is an obvious inference that the person selected should be exempt from any disqualification, which might prevent him fulfilling the purpose of the adoption." This is supported by Nanda Pandita, "Dattaka Mimansa," s. 2, para. 82. See, however, Sircar's "Law of Adoption," pp. 349, 350.

⁵ Sircar's "Law of Adoption,"

p. 350.

⁶ *Kusum Kumari Roy v. Satyaranjan Das* (1903), 30 Calc. 999; 7 C. W. N. 784.

⁷ *Akhoy Chunder Bagchi v. Kalapahar Haji* (1885), 12 I. A. 198; 12 Calc. 406; S. C. in Court below, *Gyanendro Chunder Lahiri v. Kalla Pahar Hajee* (1882), 9 Calc. 50; 11 C. L. R. 297; *Surendrakeshav Roy v. Doorgasundari Dassee* (1892), 19 I. A. 108; 19 Calc. 513; S. C. in Court below, *Doorgasundari Dossee v. Surendra Keshav Roy* (1886), 12 Calc. 686; *Siddessury Dossee v. Doorga Churn Sett* (1865), 2 Ind. Jur. (N. S.) 22; Bourke, O. C. 360. See also *Monemonthonath Dey v. Onontnath Dey* (1865), 2 Ind. Jur. (N. S.) 24.

⁸ (1846), 4 M. I. A. 1; 7 W. R. P. C. 57; ante, p. 99.

⁹ See Sircar's "Law of Adoption," p. 184.

¹⁰ (1865), 2 Ind. Jur. (N. S.) 22; Bourke, O. C. 360.

Boy who has been previously adopted. Adoption by two persons.

Personal defects.

Simultaneous adoptions.

ceremonies for the two boys were carried on, practically speaking, simultaneously, although possibly the beginnings and endings were not absolutely synchronous. If either boy was adopted, both were adopted, and it would be an outrage to common sense to say otherwise than that they were adopted at one and the same time."

ACT OF ADOPTION.

Giving and
taking neces-
sary.

There must in every case be an actual corporeal gift and acceptance of the boy in adoption,¹ coupled with an expression of the intention of the one person to give, and of the other to accept, the boy in adoption.²

A mere gift by a document transferring the boy,³ or a constructive gift of an absent boy,⁴ or an expression of assent⁵ or intention⁶ without an actual gift is insufficient.

Writing un-
necessary.
Adoptions in
Oudh.

A deed or other writing in support of the act of adoption is unnecessary,⁷ but in cases to which the Oudh Estate Act, 1869,⁸ applies, an adoption by

¹ *Bireswar Mookerji v. Ardha Chunder Roy Chowdhry* (1892), 19 I. A. 101; 19 Calc. 452; *Shosinath Ghose (Mahashoya) v. Krishna Soondari Dasi (Srimati)* (1880), 7 I. A. 250; 6 Calc. 381; 7 C. L. R. 313; *V. Singamma v. Vinjamuri Venkatacharlu* (1868), 4 Mad. H. C. 165; *Veerapermall Pillay v. Narrain Pillay* (1801), 1 Mad. N. C. 78.

² *Ranganayakamma v. Alwar Setti* (1889), 13 Mad. 214, at pp. 218, 219. See also *Govindayyar v. Dorasami* (1887), 11 Mad. 5, at p. 7, where in referring to *Shosinath Ghose (Mahashoya) v. Krishna Soondari Dasi (Srimati)* (1880), 7 I. A. 250; 6 Calc. 381; 7 C. L. R. 313, the Court said, "the decision is an authority for the proposition that any overt act is not sufficient, but that there must be corporeal delivery of the child by a person competent to give, to a person competent to take, accompanied by the declaration on the one side, 'I give the child in adoption,' and on the other, 'I take the child in adoption.'" *Kenchawa v. Ningupa* (1866), 10 Bom. H. C. 265, note.

³ See *Shosinath Ghose (Mahashoya) v. Krishna Soondari Dasi (Srimati)* (1880), 7 I. A. 250, at pp. 255, 256; 6 Calc. 381, at pp. 388,

389; 7 C. L. R. 313, at pp. 318, 319; *Sreenarain Mitter v. Kishen Soondory Dassee (Sreemutty)* (1873), I. A. Sup. Vol. 149; 11 B. L. R. 171; S. C. sub nomine, *Nogendro Chundro Mittro v. Kishen Soondery Dossee*, 19 W. R. C. 3. 133; S. C. in Court below, *Srinarayan Mitter v. Krishna Sundari Dasi (Srimati)* (1869), 2 B. L. R. A. C. 279; 11 W. R. C. R. 196; *Mandit Koer (Mussamat) v. Phool Chand Lal* (1897), 2 C. W. N. 154; *Dhapabai v. Champalal* (1899), 1 B. M. L. R. 842.

⁴ *Siddessory Dossee v. Doorgachurn Sett* (1865), Bourke, O. C. 360; 2 Ind. Jur. N. S. 22.

⁵ *Bashetiappa v. Shivlingappa* (1873), 10 Bom. H. C. 268, at p. 270; *Kenchawa v. Ningupa* (1867), 10 Bom. H. C. 265, note; *Gourbullub v. Jugernatpersaud Mitter* (1823), F. Macn. Cons. H. L. 217; 1 Morley's "Digest," 18.

⁶ *Banee Pershad (Baboo) v. Abdool Hye (Moonshee Syud)* (1876), 25 W. R. C. R. 192.

⁷ *Bayabai v. Bala* (1866), 7 Bom. H. C. App. i., at p. ii.; *Sootroogun Sutputty v. Sabitra Dye* (1834), 2 Knapp, 287, at p. 290; 5 W. R. P. C. 109.

⁸ I. of 1869.

a widow must be by a writing executed and attested in manner required in case of a will,¹ and registered.²

Although it is usual to invite relations to the performance of the ceremonies, and, in the case of large landowners, to represent the fact of the adoption to the Government authorities, the absence of such invitation or representation does not vitiate the adoption.³ The consent of the ruling authority is not necessary,⁴ even in the case of vatandars,⁵ unless it be a condition of the exercise of a permission to adopt.⁶

The person giving in adoption ought not to receive any consideration for the adoption; but it has been held that if he does so the adoption is not void.⁷

A contract to pay money in consideration of giving or receiving a son in adoption is illegal and cannot be enforced,⁸ but it does not affect the validity of the adoption.⁹

As to an arrangement made by a widow to reserve the property of her husband for herself, see *post*, pp. 178, 179.

Where a father gives his son in adoption, he has apparently no power to impose a condition invalidating the adoption on the happening or non-happening of a future event; but in giving to his wife permission to give in adoption, he may subject the exercise of that power to a condition, and unless that condition be substantially fulfilled the gift has no effect.¹⁰

¹ Act X. of 1865, s. 50, applied to wills under Act I. of 1869 by s. 19 of the latter Act.

² S. 22 (8). This would apparently not take the place of the corporeal giving and receiving required by Hindu law. See *Bhaiya Rabidatt Singh v. Indar Kunwar (Maharani)* (1888), 16 I. A. 53, at p. 56; 16 Calc. 556, at p. 561.

³ See *Alank Manjari v. Fakir Chand Sarcar* (1834), 5 Ben. Sel. R. 356 (new edition, 418); *Narhar Govind Kulkarni v. Narayan Vithal* (1877), 1 Bom. 607; *Rangubai v. Bhagirthibai* (1877), 2 Bom. 377; *Ramchandra Vasudev v. Nanaji Timaji* (1870), 7 Bom. H. C. (A. C. J.) 26.

⁴ *Bhasker Buchajee v. Narro Ragho-nath* (1826), Bom. Sel. R. 24, at p. 29; *Ramchandra Vasudev v. Nanaji Timaji* (1870), 7 Bom. H. C. (A. C. J.) 26; *Narhar Govind Kulkarni v. Narayan Vithal* (1877), 1 Bom. 607.

⁵ *Balaji v. Datto* (1902), 4 Bom. L. R. 762.

⁶ *Rangubai v. Bhagirthibai* (1877), 2 Bom. 377.

⁷ *Murugappa Chetti v. Nagappa Chetti* (1905), 29 Mad. 161. See *Eshan Kishor Acharjee Chowdhry v. Haris Chandra Chowdhry* (1874) 13 B. L. R. App. 42; 21 W. R. C. R. 381. G. C. Sircar says ("Law of Adoption," p. 375), "In the majority of cases some sort of valuable consideration is given by the adopter to the natural father for inducing him to give away his son."

⁸ See *Eshan Kishor Acharjee Chowdhry v. Haris Chandra Chowdhry* (1874), 13 B. L. R. App. 42; 21 W. R. C. R. 381; *Mahableshwar Fondbha v. Durgabai* (1896), 22 Bom. 199, at p. 206; *Sitaram Pandit (Shri) v. Harihar Pandit (Shri)* (1910), 35 Bom. 169; 12 Bom. L. R. 910.

⁹ See *Mahableshwar Fondbha v. Durgabai* (1896), 22 Bom. 199.

¹⁰ *Rangubai v. Bhagirthibai* (1877), 2 Bom. 377. In this case the previous sanction of Government was the

If the condition be an illegal or immoral one, the gift would be effectual even though the condition be not performed.

It is by no means clear what effect upon the boy's position in his natural family would be caused by an adoption upon a condition which is not fulfilled.

As to conditions with regard to the property made at the time of the adoption, see *post*, pp. 178, 179.

As to gifts of property conditional on adoption, see *post*, pp. 198, 199.

Mental
capacity of
giver and
taker.

The person taking¹ and the person giving² in adoption must be mentally capable of understanding, and must understand the significance of the act, otherwise there is no valid gift or acceptance, as the case may be.

There may be a question as to whether the amount of mental capacity which is requisite in the case of a will³ is necessary for the taking a child in adoption,⁴ as the taking in adoption is a matter of religious necessity.⁵

Fraud, etc.

If an adoption has been brought about by fraud, coercion,⁶ mistake,⁷ misrepresentation,⁸ undue influence,⁹ or otherwise than by the free consent of the persons giving and taking in adoption, it is voidable.¹⁰ It can be ratified subsequently if no one's interest is prejudicially affected by such ratification.¹¹

Where the adopter is a young widow, the Court will require clear evidence that, at the time of adoption, she was fully informed of her rights, and of the effect of adoption.¹² There may, however, be some

condition required by the natural father.

¹ *Tayammaul v. Sashachalla Naiker* (1865), 10 M. I. A. 429 (see this case as to an adoption by a person in extremis); *Bullabakant Chowdree v. Kishenprea Dassea Chowdrain* (1838), 6 Ben. Sel. R. 219 (2nd edition, 270); *Mandit Koer (Mussammal) v. Phool Chand Lal* (1897), 2 C. W. N. 154, at p. 156.

² *Bireswar Mookerji v. Ardha Chunder Roy Chowdhry* (1892), 19 I. A. 101, at pp. 105, 106; 19 Calc. 452, at p. 461.

³ See Phillips and Trevelyan's "Hindu Wills," pp. 258, 259.

⁴ *Banee Pershad (Baboo) v. Abdool Hye (Moonshee Syud)* (1876), 25 W. R. C. R. 192, at p. 195.

⁵ *Ante*, p. 97.

⁶ *Ranganayakamma v. Alwar Setti* (1889), 13 Mad. 214, at pp. 220 to 224. See Sircar's "Law of Adop-

tion," pp. 205, 431.

⁷ *Bayabai v. Bala* (1866), 7 Bom. H. C., App. i., at pp. xx., xxi.

⁸ See *Bayabai v. Bala* (1866), 7 Bom. H. C., App. i., at pp. xx., xxi., xxiii.

⁹ *Somasekhara Raja v. Subhadramaji* (1882), 6 Bom. 524. See *Bayabai v. Bala* (1866), 7 Bom. H. C., App. i., at pp. xx., xxi.

¹⁰ *Venkata Narasimha Appa Row (Sri Rajah) v. Rangayya Appa Row (Sri Rajah)* (1905), 29 Mad. 437.

¹¹ *Ibid.*

¹² *Bayabai v. Bala* (1866), 7 Bom. H. C., App. i., at pp. xx., xxi. See *Tayammaul v. Sashachella Naiker* (1865), 10 M. I. A., at p. 433. There have been a number of cases in which it has been held that if it is sought to make a *purdahnashen* woman responsible for acts which are detrimental to her interest, it must be clearly shown that she knew the

relaxation of the strictness of this rule where the husband has directed his wife to adopt.¹

Where a person who has attained the age of majority² is adopted, his assent would be essential to the adoption. In other cases no such assent is necessary.³

In the case of Sudras no religious ceremonies are necessary.⁴

An intentional omission to perform even unnecessary ceremonies, with a view to leave the adoption unfinished,⁵ or a non-performance of contemplated ceremonies in consequence of death, or of some other cause, may be evidence to show that the adoption is incomplete.

Except in the Punjab,⁶ and amongst Jains,⁷ the performance of the *datta homam*⁸ is apparently necessary in the case of the twice-born classes, at any rate where the boy is not of the same *gotra* as the adoptive father.

No ceremonies are necessary in an adoption in the *dvyamushyayana* form among the Nambudri Brahmins.⁹

Where the boy is of the same *gotra* as the adoptive father,

effect of such acts and had had independent advice, and that no advantage was taken of her.

¹ *Bayabai v. Bala* (1866), 7 Bom. H. C., App. i., at pp. xx., xxi.

² I.e. the age of majority according to Hindu law, *ante*, pp. 42, 43. As to cases where the adoption of majors is possible, see *ante*, pp. 141, 142.

³ Sircar's "Law of Adoption," pp. 280, 281. In Strange's "Hindu Law," vol. i. p. 88, it is said that "the adopted son must consent," but the authority there given (*Kullean Sing v. Kirpa Sing* (1795), 1 Ben. Sel. R. 9 (2nd ed., p. 11)) was the case of a *Kritrima* adoption, where the consent of the person adopted would always be necessary, *post*, p. 153.

⁴ *Shosinath Ghose (Mahashoya) v. Krishna Soondari Dasi (Srimati)* (1880), 7 I. A. 250, at p. 255; 6 Calc. 381, at p. 388; 7 C. L. R. 313, at p. 319; *Indromoni Chowdhurani v. Beharilal Mullick* (1879), 7 I. A. 24; 5 Calc. 770; 6 C. L. R. 183. See *Govindayyar v. Dorasami* (1887), 11 Mad. 5, at p. 6; *Thangathanni v. Ramu Mudali* (1882), 5 Mad. 358;

Atmarum v. Madho Rao (1884), 6 All. 276, at p. 281; *Ravji Vinayakrav Jagannath Shunkarsett v. Lakshmi Bai* (1887), 11 Bom. 381, at pp. 393, 394; *Nittianand Ghose v. Krishna Dyal Ghose* (1871), 7 B. L. R. 1; 15 W. R. C. R. 300; *Perkash Chunder Roy v. Dhunmonee Dassea*, Ben. S. D. A. 1853, p. 96.

⁵ *Banee Pershad (Baboo) v. Abdool Hye (Moonshee Syud)* (1876), 25 W. R. C. R. 192, at p. 198; *Valubhai v. Govind Kashinath* (1899), 24 Bom. 218, at pp. 226, 227; 1 Bom. L. R. 770.

⁶ Tupper's "Punjab Customary Law," vol. iii. p. 82.

⁷ *Lakhmi Chand v. Gatto Bai* (1886), 8 All. 319; see *Rup Chand (Lala) v. Jambu Parshad* (1910), 37 I. A. 93; 32 All. 247; 14 C. W. N. 545; 12 Bom. L. R. 402. As to the rites which are usual among Jains, see Sircar's "Law of Adoption," p. 454.

⁸ Oblations of clarified butter to fire, Wilson's "Glossary."

⁹ *Shankaran v. Kesavan* (1891), 15 Mad. 6. As to this form of adoption, see *post*, pp. 184-186.

as, for instance, where he is a brother's son, no religious ceremonies are necessary in the Presidencies of Bombay and Madras.¹

Bengal.

In Bengal this distinction has not been made.²

There is not very much direct authority on the question whether the absence of religious ceremonies in any case invalidates an adoption among the twice-born classes. In an old case the Judicial Committee said,³ "Although neither written acknowledgments nor the performance of any religious ceremonials are essential to the validity of adoptions;" but it does not appear that the question as to the necessity of religious ceremonies was raised in that case.

In reference to these remarks the Judicial Committee said in a subsequent case,⁴ "It cannot, however, be considered as more than a *dictum*, since the decision was against the adoption in fact."

In a still later case, where the parties were Sudras, the Judicial Committee said,⁵ "It is perfectly clear that amongst the twice-born classes there would be no such adoption by deed, because certain religious ceremonies, the *daṭṭa homam* in particular, are in their case requisite."

Although it has been considered that this expression of opinion decides the question,⁶ "it is doubtful if more was intended than to point out that such religious ceremonies are requisite as part of the purely ceremonial law, not that the validity of an adoption for civil purposes depends on their due observance."⁷ At any rate, so far as the Judicial Committee is concerned, there are only contradictory *dicta* on the subject.

The High Courts have accepted the view that the performance of the

¹ *Valubai v. Govind Kashinath* (1899), 24 Bom. 218; 1 Bom. L. R. 770; *Govindayyar v. Dorasami* (1887), 11 Mad. 5, preferring on this point *V. Singamma v. Vinjamuri Venkatacharu* (1868), 4 Mad. H. C. 105, to *Venkata v. Subhadra* (1884), 7 Mad. 548; *Ranganayakamma v. Alwar Setti* (1889), 13 Mad. 214, at p. 219; *Atmaram v. Madho Rao* (1884), 6 All. 276. See *Huebut Rao Mankur v. Govind Rao Bulwant Rao Mankur* (1820), 2 Borr. 75, at pp. 85, 87.

² A suggestion of a distinction on this ground was made in *Nittianand Ghose v. Krishna Dyal Ghose* (1871), 7 B. L. R. 1, at p. 5; 15 W. R. C. R. 300, at p. 301, where the parties were Sudras, and the question was not decided. In *Atma Ram v. Madho Rao* (1884), 6 All. 276, at p. 279, Stuart, C. J., considered that the distinction was one of general applica-

tion. Sastri G. C. Sircar ("Law of Adoption," p. 382) repudiates the distinction.

³ *Sootroogun Sutputhy v. Sabitra Dhye* (1834), 2 Knapp, 287; 5 W. R. P. C. 109.

⁴ *Indromoni Chowdhurani v. Beharilal Mullick* (1879), 7 I. A. 24, at p. 36; 8 Cal. 770, at p. 774; 6 C. L. R. 183, at p. 191.

⁵ *Shosinath Ghose (Mohashoya) v. Krishna Soondari Dasi* (1880), 7 I. A. 250, at p. 256; 6 Cal. 381, at pp. 388, 389; 7 C. L. R. 313, at p. 319.

⁶ *Ranganayakamma v. Alwar Setti* (1889), 13 Mad. 214, at p. 220. The parties in this case were Vajays, but as there was no effective giving or taking, the decision of this question was not necessary.

⁷ *Atma Ram v. Madho Rao* (1884), 6 All. 276, at p. 283.

datta homam is necessary,¹ but in one case only² has a High Court, so far as the writer can ascertain, set aside an adoption on the ground that religious ceremonies had not been performed.

It has been suggested³ that adoption by a widow perhaps stands on a different footing, as, "according to the sages, the twice-born females hold the same position as Sudras with respect to the performance of religious ceremonies," but this distinction is not made by the cases which hold that religious ceremonies are necessary in the case of an adoption in one of the regenerate classes. In some of those cases⁴ the adoption was made by a widow.

Adoption by
twice-born
females.

The *homa* ceremony may be performed at any time after the actual giving and taking, and it does not seem to be necessary that the father should perform it. Its performance after the death of the natural father,⁵ or of the adoptive father,⁶ does not invalidate the adoption. When the *homa* is necessary, the adoption is not complete until it is performed.

Time of per-
formance of
homa.

Although it is usual to perform the *homa* in the dwelling-house of the adopter,⁷ it is immaterial where the ceremony is performed.⁸

Place of
performance.

There seems to be nothing to prevent the natural and adoptive parents delegating to others the performance of the *homa* ceremony.⁹

Delegation of
performance
of religious
ceremonies.

¹ *Ranganayakamma v. Alwar Setti* (1889), 13 Mad. 214, at p. 220; *Venkata v. Subhadra* (1884), 7 Mad. 548; *Govindayyar v. Dorasami* (1887), 11 Mad. 5, at pp. 9, 10; *Chandramala Patta Mahadevi (Sri Sri) v. Mukturnala Patta Mahadevi (Sri)* (1882), 6 Mad. 20; *Atmaram v. Madho Rao* (1884), 6 All. 276; *Oomrao Singh (Thakoor) v. Mehtab Koonwer (Thakooranee)* (1868), 3 Agra H. C. 103A. See *Ravji Vinayakrav Jaggannath Shankarsett v. Lakshmibai* (1887), 11 Bom. 381, at pp. 393, 394; "Dattaka Mimansa," v. 36; West and Bühler, 922, 923; Steele, 45.

² *Luchmun Lall v. Mohun Lall Bhaya Gayal* (1871), 16 W. R. C. R. 179; *post*, p. 150, note 1.

³ Sircar, "Law of Adoption," p. 381. See "Dattaka Mimansa," s. 1, para. 27; "Vyavahara Mayukha," s. 1, para. 15.

⁴ *Luchmun Lall v. Mohun Lall Bhaya Gayal* (1871), 16 W. R. C. R. 179; *Ranganayakamma v. Alwar Setti*

(1889), 13 Mad. 214; *Ravji Vinayakrav Jaggannath Shankarsett v. Lakshmibai* (1887), 11 Bom. 381; *Atmaram v. Madho Rao* (1884), 6 All. 276; *Oomrao Singh (Thakoor) v. Mehtab Koonwer (Thakooranee)* (1868), 3 Agra H. C. R. 103A.

⁵ *Venkata v. Subhadra* (1884), 7 Mad. 549. In this case five years had elapsed. In the interval the natural father died, but the *homa* was performed by one of his sons.

⁶ *Subbarayar v. Subbammal* (1898), 21 Mad. 497; S. C. on appeal (1900), 27 I. A. 162; 24 Mad. 214; 4 C. W. N. 304; 2 Bom. L. R. 982.

⁷ Sircar's "Law of Adoption," pp. 382, 383.

⁸ *Oomrao Singh (Thakoor) v. Mehtab Koonwer (Thakooranee)* (1868), 3 Agra H. C. 103A.

⁹ See *Subbarayar v. Subbammal* (1898), 21 Mad. 497; *Lakshmibai v. Ramchandra* (1896), 22 Bom. 590. As to the delegation of the giving and receiving, see *ante*, pp. 127, 131.

Other religious ceremonies.

Although other religious ceremonies may be usual, it does not appear that the absence of them invalidates an adoption.¹

Requirements of valid adoption.

Provided the above rules as to the capacity to take in adoption, the capacity to give in adoption, the capacity to be taken in adoption, and as to the act of adoption, are followed, an adoption is valid ; otherwise it is void.²

Subsequent event.

The invalidity of an adoption, or of a power to adopt, cannot be cured by a subsequent event.³

Illustrations.

(a) An adoption made during the lifetime of a son is not rendered valid by the death of such son.⁴

(b) A power to adopt a son as co-heir to a living son cannot be exercised even after the death of the living son.⁵

(c) The death of the son's widow, in whom the property has vested, does not validate an adoption made before her death.⁶

Consent does not validate adoption.

Except in so far as the law in certain cases requires the consent of kinsmen for the purpose of validating an adoption,⁷ the consent of the person in whom the estate of the adoptive father is vested, or of the person or persons entitled in reversion, does not validate an adoption which is otherwise invalid.⁸

¹ In *Luchmun Lall v. Mohun Lall Bhaya Gayal* (1871), 16 W. R. C. R. 179, the Court held that the performance of the *putresti jag* (sacrifice for male issue) is essential to the validity of an adoption among the three superior castes. G. C. Sircar ("Law of Adoption," p. 383) suggests that the words "*putresti jag*" were in the judgment in that case by mistake substituted for "*datta homam*," as the *putresti jag* is only necessary when the ceremony of tonsure has been performed in the natural family ("*Dattaka Mimamsa*," s. 4, paras. 32, 49).

² See *Ganga Sahai v. Lekhraj Singh* (1886), 9 All. 253, at pp. 296, 297. As to the application of the doctrine *factum valet quod fieri not debuit*, see *ibid.* *Gurulingaswami (Sri Balusu) v. Ramalakemamma (Sri Balusu), Radha Mohun v. Hardai Bibi* (1899), 26 I. A. 113, at p. 144; 22 Mad. 398, at p. 423; 21 All. 460, at p. 487; 3 C. W. N. 427, at p. 448, at p. 487; 1 Bom.

L. R. 226; *Uma Deyi (Srimati) v. Gokoolanund Das Mahapatra* (1878), 5 I. A. 40, at p. 53; 3 Calc. 587, at p. 601; *Lakshmappa v. Ramava* (1875), 12 Bom. H. C. 362, at p. 398; *Gopal Narhar Safray v. Hanmant Ganesh Safray* (1879), 3 Bom. 273, at p. 293; *Dharma Dagv v. Ram Krishna Chimnaji* (1885), 10 Bom. 80, at p. 86.

³ As to the postponement of the religious ceremonies, see *ante*, p. 149.

⁴ *Basoo Camumah v. Basoo Chinna Venkataswami*, Mad. S. D. A. 1856, p. 20; *Veraprashya v. Santauraja*, Mad. S. D. A., 1860, p. 168.

⁵ *Joy Chundro Raee v. Bhyrub Chundro Raee*, Ben. S. D. A. 1849, 461.

⁶ *Pudma Coomari Debi v. Court of Wards* (1881), 8 I. A. 229; 8 Calc. 302.

⁷ *Ante*, pp. 115-121.

⁸ *Annammah v. Mabbu Bali Reddy* (1875), 8 Mad. H. C. 108, at p. 112; *Mohendrololl Mookerjee v. Rookiney Dabee* (1864), Coryton, 42, at p. 43;

It has been held in Bombay that where the adoption takes place with the full consent of the person in whom the estate is vested by inheritance, the adoption is rendered valid, and the estate vested in the adopted son by such consent;¹ but there is authority to the contrary to be found in decisions of the same Court.²

It is submitted, that although the consent may have the effect of estopping the person consenting from denying the adoption,³ and thereby divesting the estate, it cannot otherwise affect the validity of the adoption as for example it cannot affect the inheritance by or to collaterals.

As to the consent of a son to an adoption by his father, see *ante*, p. 147.

As to consent to the divesting of estates on adoption, see *post*, pp. 190, 191.

As to estoppel and acquiescence, see *post*, pp. 166, 167.

An adoption once validly made cannot be cancelled by the natural or adoptive parents,⁴ or renounced by the adopted son.⁵

Cancellation or
Renunciation.

There is nothing to prevent an adopted son renouncing any interest in property which would come to him as such.⁶

KRITRIMA FORM OF ADOPTION.

In the district of Mithila, or Tirhoot,⁷ where it is the prevailing form,⁸ and in the adjoining districts,⁹ a form of adoption

Adoption in
Kritrima form.

Adivi Surya Prakasa Rao v. Nidamarty Gangaraju (1909), 33 Mad. 228. See *Anandibai v. Kashibai* (1904), 28 Bom. 461, at p. 465; 6 Bom. L. R. 464; Mayne's "Hindu Law," 7th ed., pp. 255, 256.

¹ *Payapa Akkapa Patel v. Appanna* (1898), 23 Bom. 327, at pp. 331, 332; *Babu Anaji v. Ratnoji Krishnarav* (1895), 21 Bom. 319; *Gopal Balkrishna Kenjale v. Vishnu Raghunath Kenjale* (1898), 23 Bom. 250; *Rupchand Hindumal v. Rukhmabai* (1871), 8 Bom. H. C. A. C. J. 114, at p. 122. From any point of view the consent of a minor is not sufficient to validate an adoption. *Vasudeo Vishnu Manohar v. Ramchandra Vinayak Modak* (1896), 22 Bom. 551.

² See *Dharnidhar (Shri) v. Chinto* (1895), 20 Bom. 250, at p. 258; *Vasudeo Vishnu Manohar v. Ramchandra Vinayak Modak* (1896), 22 Bom. 551, at p. 555; *Bharmawa v. Sangappa* (1900), 2 Bom. L. R. 628; *Anandibai v. Kashibai* (1904), 28 Bom. 461, at p. 465; 6 Bom. L. R. 464.

³ *Post*, p. 166.

⁴ Colebrooke's "Digest," vol. ii. p. 111; Strange's "Hindu Law," vol. ii. p. 108; *Sukhbasi Lal v. Guman Singh* (1879), 2 All. 366; *Huebut Rao Mankur v. Govind Rao Bulwant Rao Mankur* (1823), 2 Borr. 75.

⁵ *Mahadu Ganu v. Bayaji Sidu* (1893), 19 Bom. 239; *Ruvee Bhudr v. Roopshunker Shunkerjee* (1823) 2 Borr. 656, at pp. 665, 671.

⁶ *Post*, p. 183.

⁷ See *ante*, p. 11.

⁸ *Kullean Sing v. Kirpa Sing* (1795), 1 Ben. Sel. R. 4 (new edition, 11); *Sutputtee (Mussummaut) v. Indranund Jha* (1816), 2 Ben. Sel. R. 173, note to p. 175 (new edition, 221, note to p. 224); Colebrooke's "Digest," vol. iii. p. 276; Strange's "Hindu Law," vol. ii. p. 204. There is nothing to prevent a *dattaka* adoption in the Mithila district by a man, Sircar's "Law of Adoption," p. 447; but a widow cannot adopt in that form according to the Mithila school.

⁹ Sircar's "Law of Adoption," p. 448. In a note to *Srinath Serma v.*

called the *Kritrima*¹ is practised, and is recognized by the law.

This form of adoption is not to be confounded with the adoption of a *Kritrima* son according to the Smritis and commentaries. The latter held the same position as a *Dattaka* son, and the ceremonies and conditions were apparently identical in both cases. The *Kritrima* form of adoption which in ancient times prevailed throughout India has long been obsolete.

The modern form of *Kritrima* adoption is based upon recent authorities, and is said to owe its origin to the prohibition² of adoption by a widow in the Mithila country.³

Who can
adopt.

Either a man or a woman can adopt in this form, provided he or she has no son,⁴ grandson, or great grandson in existence.

A wife or widow so adopting does not require the assent of her husband or of his kinsmen.⁵ She cannot adopt a son to her husband in this form, even if she receives his permission.⁶

A husband and wife can adopt jointly, or they may each adopt a separate son under this form.⁷

Who may be
adopted.

Except that he must belong to the same class⁸ as the person adopting him, there is no restriction as to the person to be adopted.⁹

Relationship.

The relationship of the adopter and the adopted does not, it is submitted, affect the validity of the adoption.

In *Purmessur Dutt Jha (Chowdree) v. Hunooman Dutt Roy*,¹⁰ the adoption of a sister's son by a Brahmin in the *Kritrima* form was upheld, but in an earlier case,¹¹ the adoption of an elder brother by a younger brother was held invalid.

Radhakaunt (1796), 1 Ben. Sel. R. 15, at p. 16 (new edition, 19, at p. 21), it is said that this form of adoption "is in use in North Behar, and the contiguous districts of Baglipore (Bhaughulpore) and Purnea."

¹ Factitious. *Kritrima putra* means the son made, Wilson's "Glossary," p. 297.

² *Ante*, p. 121.

³ W. Macnaghten's "Hindu Law," vol. i. pp. 95-100.

⁴ Sircar's "Law of Adoption," p. 449.

⁵ W. Macnaghten's "Hindu Law," vol. ii. pp. 195, 196. *Shibkoeree (Mussumut) v. Joogun Singh* (1867), 8 W. R. C. R. 155, at p. 157; *Collector of Tirhoot v. Huopershad Mohunt* (1867), 7 W. R. C. R. 500.

⁶ See answers of pundits in *Sree-*

ngrain Rai v. Bhya Jha (1812), 2 Ben. Sel. R. 23, at p. 27 (new edition, 29, at pp. 34, 35).

⁷ See *Sreenarain Rai v. Bhya Jha* (1812), 2 Ben. Sel. R. 23, at p. 27 (new edition, 29, at p. 34); 1 W. Macn. 101.

⁸ See *ante*, pp. 19, 132.

⁹ *Purmessur Dutt Jha (Chowdree) v. Hunooman Dutt Roy* (1837), 6 Ben. Sel. R. 192 (new edition, 235, at p. 246); 1 Macnaghten's "Hindu Law," pp. 75, 76.

¹⁰ (1837), 6 Ben. Sel. R. 192 (new edition, p. 235).

¹¹ *Runjeet Sing (Baboo) v. Obhye Narain Sing (Baboo)* (1817), 2 Ben. Sel. R. 245 (new edition, 315). Sir Wm. Macnaghten points out ("Hindu Law," vol. i. p. 76, n.) that the authorities cited by the law

In *Nunkoo Singh v. Purn Dhun Singh*,¹ an adoption of a sister's son in the *Kritrima* form was upheld, but on the ground that the parties did not belong to one of the regenerate classes.

According to the *Dvaita-Parishishta* of Kesaba Misra, a pundit of Mithila, even a father or a brother may be adopted.²

Sir William Macnaghten considers that there is no restriction except as to tribe,³ but Sastri G. C. Sircar⁴ contends that the rule as to relationship applicable to an adoption in the *Dattaka* form⁵ are equally applicable to an adoption in the *Kritrima* form.

The age of the son adopted in this form is immaterial.⁶

Age.

The performance of the initiatory ceremonies in the natural family,⁷ or the marriage,⁸ does not prevent the adoption.

The consent of the adopted son,⁹ and the consent (or at any rate the absence of the express dissent) of his parents, if living, is necessary to this form of adoption, when he is a minor.¹⁰

Consent.

The relationship being one created by contract, the consent of all the necessary parties must coincide. An assent given by the son after the death of the adoptive father to an adoption to which the adoptive father assented before his death will not be sufficient.¹¹

No ceremonies are necessary,¹² and no particular form is required to be observed.

Ceremonies.

Colebrooke¹³ cites from "Rudradhara in the *Suddhiviveka*," the following :—

"The form to be observed is this. At an auspicious time, the adopter of a son having bathed, addressing the person to be adopted, who has also bathed, and to whom he has given some acceptable chattel, says, 'Be my

officers in that case had relation to the *Dattaka* form of adoption."

¹ (1869), 12 W. R. C. R. 356.

² *Ooman Dutt v. Kunhia Singh* (1822), 3 Ben. Sel. R. 145, at p. 149 (new edition, 192, at p. 199).

³ I.e. caste or class, "Hindu Law," vol. i. pp. 75, 76.

⁴ "Law of Adoption," p. 339, "Dattaka Mimansa," s. 5, paras. 47-56.

⁵ *Ante*, pp. 133-139.

⁶ *Shibkoeree (Musamat) v. Joogun Singh* (1867), 8 W. R. C. R. 155, at p. 158; *Ooman Dutt v. Kunhia Singh* (1822), 3 Ben. Sel. R. 145 (new edition, 192, at p. 197).

⁷ W. Macnaghten's "Hindu Law," vol. ii. p. 196. "Initiation into the family of the adopter is not practised" in this form of adoption, Strange's

"Hindu Law," vol. ii. p. 204.

⁸ W. Macnaghten's "Hindu Law," vol. i. p. 76.

⁹ *Luchmun Lall v. Mohun Lall Bhaya Gayal* (1871), 16 W. R. C. R. 179, at p. 180; *Durgopal Singh v. Roopun Singh* (1839), 6 Ben. Sel. R. 271 (new edition, p. 340); Sutherland's "Synopsis," 673; W. Macnaghten's "Hindu Law," vol. ii. p. 196.

¹⁰ W. Macnaghten's "Hindu Law," ii. 196.

¹¹ *Sutputtee (Musumat) v. Indra-nund Jha* (1816), 2 Ben. Sel. R. 137 (new edition, 221).

¹² *Shibkoeree (Musumat) v. Joogun Singh* (1867), 8 W. R. 155, at p. 158.

¹³ "Mitakshara," chap. i. s. 11, para. 17, note.

son.' He replies, 'I am become thy son.' The giving of some chattel arises merely from custom. It is not necessary to the adoption. The consent of both parties is the only requisite; and a set form of speech is not essential."¹

A *Kritrima* adoption, when once validly made, cannot be revoked.²

SOME OTHER SPECIAL AND LOCAL FORMS OF ADOPTION.

Gyawals.

In the district of Gya there is amongst the Gyawal Brahmins a practice of adoption in a form which is similar to the *Kritrima* form. It is purely contractual, and does not affect the position of the adopted son in his natural family.³

Illatom
adoption.

Among the Reddi caste⁴ it is customary for a man who has no son⁵ to affiliate a son-in-law by what is called an *Illatom*⁶ adoption.

This custom prevails in the Bellary, Kurnool, Cuddapah, Nellore, and North and South Arcot districts,⁷ but not among the Kondarazu caste of the Vizagapatam district.⁸ There is no mention of this form of adoption in the Digests, and there are few decided cases on the subject.⁹ It is necessary to determine each case according to the evidence as to the custom, and its effects which may be brought forward.¹⁰

It is uncertain whether a man having a son can affiliate a son-in-law in this form of adoption, whether the affiliation is effected by the introduction into the family, or requires for its completion marriage with a daughter, and whether, if the father be dead, the right may be exercised by a surviving paternal grandfather.¹¹

Effect of
illatom
adoption.

A son-in-law so adopted stands for purposes of inheritance in the place

¹ Referred to in *Durgopal Singh v. Roopun Singh* (1839), 6 Ben. Sel. R. 271, at p. 273 (new edition, 340, at p. 342). See *Kullean Sing v. Kirpa Sing* (1795), 1 Ben. Sel. R. 9 (new edition, 11, at p. 12). W. Macnaghten's "Hindu Law," vol. i. p. 98.
² W. Macnaghten's "Hindu Law," vol. ii. p. 196.

³ See *Luchmun Lal Chowdhry v. Kanhya Lal Mowar* (1894), 22 I. A. 51; 22 Cal. 609; *Luchmun Lal v. Mohun Lal Bhaya Gayal* (1871), 16 W. R. C. R. 179; *Lachmi Dai Mohutain (Must.) v. Kissen Lal Pahari Mahaton Gayal* (1906), 11 C. W. N. 147.

⁴ The principal caste of Telinga cultivators, a caste of Sudras, Wilson's "Glossary," p. 442.

⁵ See *Yachereddy Chinna Bassavapa*

v. Yachereddy Gowdapa (1835), 5 W. R. P. C. 114.

⁶ *Illata*, a bride's father having no son, and adopting his son-in-law, Wilson's "Glossary," p. 216.

⁷ *Balarami Reddi (Sivada) v. Pera Reddi (Swada)* (1883), 6 Mad. 267, at p. 269. See also *Hanumantamma v. Rami Reddi* (1881), 4 Mad. 272.

⁸ *Narasimha Razu v. Veerabhadra Razu* (1893), 17 Mad. 287.

⁹ See *Hanumantamma v. Rami Reddi* (1881), 4 Mad. 272, at p. 275; *Tayumana Reddi v. Perumal Reddi* (1862), 1 Mad. H. C. 51.

¹⁰ See *Chinna Obayya v. Sura Reddi* (1897), 21 Mad. 226; *Mallu Reddi v. Padmamamma* (1893), 17 Mad. 48, at p. 50.

¹¹ *Hanumantamma v. Rami Reddi* (1881), 4 Mad. 272, at pp. 282, 283.

of a son, and in competition with natural born sons,¹ or sons adopted in the *Dattaka* form,² takes an equal share.

He does not lose any of his rights of inheritance in his natural family,³ Inheritance. nor do the members of his natural family lose their rights of succession to him.⁴

An *illatom* son-in-law can deal with property acquired by him as such Disposition. in the same way as he can deal with any other self-acquired property. His sons have no right therein by virtue of their birth.⁵

The property received by the *illatom* son-in-law as such passes to his Heirs. heirs in the same way as self-acquired property.⁶ The heirs of the adopter have no right in it.

It is uncertain whether a son-in-law so adopted obtains a right to insist Right to upon partition of ancestral property during the father's lifetime.⁷ He partition. apparently cannot do so, as it has been held that there is no right of survivorship between him and an adopted son living in commensality with him,⁸ and the interest acquired by the *illatom* son-in-law is to be treated as Right of survivorship. self-acquired property.⁹

The taking of a son-in-law in *illatom* adoption does not prevent the subsequent adoption of a *Dattaka* son.¹⁰

In Nair families governed by the *Marumakkathayam* rule of inheritance, Malabar law, the right (and perhaps duty) to adopt females into the family or *taravad*, Marumakka-thayam system. is vested in the *karnavan*, or head of a family, but he cannot, except in the case of custom or where it is essential to the preservation of the *taravad*, adopt without consulting the co-sharers.¹¹ It cannot be so essential until the last possible *karnavan* has been reached.

¹ *Hanumantamma v. Rami Reddi* (1881), 4 Mad. 272, at p. 283. This places him in a better position than a *Dattaka* son, see *post*, pp. 180, 181.

² See *Chenchamma v. Subbaya* (1885), 9 Mad. 114, at p. 116.

³ *Balarami Reddi (Sivada) v. Pera Reddi (Sivada)* (1883), 6 Mad. 267.

⁴ *Ramakristna v. Subbakka* (1889), 12 Mad. 442.

⁵ *Challa Papi Reddi v. Challa Koti Reddi* (1872), 7 Mad. H. C. 25.

⁶ *Chenchamma v. Subbaya* (1885), 9 Mad. 114; *Challa Papi Reddi v. Challa Koti Reddi* (1872), 1 Mad. H. C. 25; *Ramakristna v. Subbakka* (1889), 12 Mad. 442. See *Malla Reddi v. Padmanamma* (1893), 17 Mad. 48, at p. 50.

⁷ *Hanumantamma v. Rami Reddi* (1881), 4 Mad. 272, at p. 283. Like other questions as to the incidents of this form of adoption this question must be determined on evidence of custom, *Chinna Obayya v. Sura Reddi* (1897), 21 Mad. 226.

⁸ *Chenchamma v. Subbaya* (1885), 9 Mad. 114. In *Malla Reddi v.*

Padmanamma (1893), 17 Mad. 48, the Court on the evidence decided against a claim of survivorship made by a male member of the family against the daughters of the son of an *illatom* son-in-law.

⁹ Above.

¹⁰ This was done in *Chenchamma v. Subbaya* (1885), 9 Mad. 114, at p. 116.

¹¹ *Thruthipalli Raman Menon v. Variangattil Palisseri Raman Menon* (1900), 27 I. A. 231; 24 Mad. 73; 4 C. W. N. 810, citing Strange's "Manual," s. 403, which is as follows: "On failure of the sister's progeny, male and female, the head of the family may make adoption. The descent being in the female line, the adoption must be of a female. In view of the probable minority of her offspring at the period when the management may fall in, a male, her brother, may be taken in adoption at the same time with herself, in order to afford provision for the administration of the affairs of the family, and for conduct of the religious rites to be observed therein."

Under the *Aliyasanta* system the last female member of the family cannot adopt a daughter without the consent of her son.¹

As to the adoption by Nambudri Brahmins following this law, see *Subramanyan v. Paramaswaran* (1887), 11 Mad. 118.

As to the law of adoption in Malabar, see Wigram's "Malabar Law and Customs," pp. 11-14.

Makkatayam system.

In families governed by the *Makkatayam*² rule of inheritance, there are three systems of adoption.³

(a) "In the first, ten hands or five persons take⁴ part, viz. the adopting parents,⁴ the natural parents, and the boy."

Wigram says that this form is probably almost identical with the ordinary Hindu adoption.⁵ It is called *pattukayyal dattu*.⁶

(b) Adoption by *Chamatha*, i.e. by burning a piece of satured grass.⁷

(c) The third form is akin to the *Kritrima* form. It is "commonly adopted by Brahmin widows and Sudras for the purpose of perpetuating the family when it is in danger of becoming extinct. There is no limit as to age or number of persons adopted. The only limit seems to be that the person or persons adopted should be of the same *varmam* or tribe as the adopter. Among Sudras the adoption should be of one or more females, but it is frequently accompanied by the adoption of a male for the purpose of providing for the future management of the adopter's property. Sometimes a whole family of adults is adopted."⁸

Nambudris.

The practice among Nambudris, that only the eldest marries, necessarily limits the right of adoption to his line.⁹ "But if there is any male relative at all, however distant, then he is not entitled to the right of adopting. The nearest and oldest relative must be made to marry, and thus preserve the family continuity. But if there should be no prospect of his brothers getting issue, and if they should give their consent to the act, then he may have recourse to an adoption, to which the consent of the other relatives is not necessary. If, however, he adopts one of his distant relatives, in that case the consent of all his other relations, however distant, will be necessary."¹⁰

Among the Nambudri Brahmins,¹¹ a widow can adopt or appoint an heir in order to perpetuate her *illam*,¹² in the absence of *dayadies*,¹³ whose

¹ *Chandu v. Subba* (1889), 13 Mad. 209; *Colay Hegaday v. Manjoo Kumpty*, Mad. S. D. A. 1859, p. 138.

² Inheritance by the male line, Wilson's "Glossary," p. 587.

³ "Travancore Census of 1891," p. 686; Wigram's "Malabar Law and Custom," p. 4.

⁴ Wigram's "Malabar Law and Custom," p. 4.

⁵ *Ibid.*

⁶ See *Vasudevan v. Secretary of State* (1887), 11 Mad. 157, at p. 174.

⁷ See *Vasudevan v. Secretary of State* (1887), 11 Mad. 157, at p. 182. Mayne's "Hindu Law," 7th ed., p. 271. "Travancore Census of 1891,"

p. 685.

⁸ Wigram's "Malabar Law and Custom," pp. 4, 5.

⁹ Mayne's "Hindu Law," 7th ed., p. 271.

¹⁰ "Travancore Census, 1891," p. 685. See Wigram's "Malabar Law and Custom," pp. 13-15. As to the general law of the Nambudris, see *Vasudevan v. Secretary of State* (1887), 11 Mad. 157.

¹¹ As to Nambudri Brahmins who follow the Marumakkathayam system, see *Subramanyan v. Paramaswaran* (1887), 11 Mad. 116.

¹² A family.

¹³ Kinsmen.

relationship is the cause of two or three days' pollution,¹ or with their consent.² It is usual, but apparently not indispensable in such case, to require the person so adopted or appointed to marry for the purpose of continuing the *illam*.³ There is, apparently, no limit of age.⁴

There seems also to have been, or to be, a custom that if a Nambudri widow directs a person to marry to raise up issue for her *illam*, the status of the son in the *illam* for which he is begotten, is that of a son obtained in gift by adoption.⁵

It is unsettled whether the Courts will recognize the common practice of dancing-girls and prostitutes to adopt daughters, but except where the child has been taken in such a way as to make her reception punishable by the Criminal law, it is submitted that there is no reason why the Courts should not give effect to such usage.⁶

Adoption of daughters by dancing-girls and prostitutes.

In cases of adoption, prior to the coming into force of the Indian Penal Code,⁷ the Courts in Madras recognized the custom,⁸ but declined to extend it by allowing a plurality of adoptions.⁹ It was also held that no ceremonies were necessary, and that mere recognition was sufficient.¹⁰ Apparently the adoptive mother cannot adopt if she has a daughter. It is immaterial whether she has a son.¹¹

In an old case in Bengal¹² the Court declined to recognize such adoptions, and in a Bombay case,¹³ the report of which does not show when the adoption took place, but where apparently it had taken place before the coming into force of the Indian Penal Code, the Court, in declining to recognize the adoption, gave reasons which are as applicable to cases before that Act came into force as thereafter.

In a later Bombay case, effect was given to an adoption effected by a dying prostitute for the purpose of providing for the performance of her funeral ceremonies, and the inheritance of her property.¹⁴

In cases where a minor under the age of sixteen years has been sold

¹ *Vasudevan v. Secretary of State* (1887), 11 Mad. 157, at p. 188. There is no substantial distinction between the power to make a *Kritrima* adoption (*ante*, p. 151) and the power to appoint an heir, *ibid.*, at p. 174. See also p. 189.

² *Keshavan v. Vasudevan* (1884), 7 Mad. 297.

³ See *Vasudevan v. Secretary of State* (1887), 11 Mad. 157, at p. 189.

⁴ *Keshavan v. Vasudevan* (1884), 7 Mad. 297, at p. 299.

⁵ *Tottakara Allutar Manakal Narain Nambudripad v. Puvally Manikal Trivikrama Nambudripad*, Mad. S. D. A. 1855, p. 125, referred to in *Vasudevan v. Secretary of State* (1887), 11 Mad. 157, at pp. 175, 176.

⁶ See *Manjamma v. Sheshgiri Rao* (1902), 26 Bom. 491, at p. 495; 4 Bom. L. R. 116. See *ante*, p. 26.

⁷ Act XLV. of 1860, which came

into force on the 1st of May, 1861.

⁸ See *Venkatachellum v. Venkata-swamy*, Mad. dec. of 1856, p. 65; *Venku v. Mahalinga* (1888), 11 Mad. 393; *Muttukannu v. Paramasami* (1888), 12 Mad. 214; *Chalakonda Alasani v. Chalakonda Ratnachalam* (1804), 2 Mad. H. C. 56; Steele, 185, 186; Strange's "Manual," paras. 98, 99.

⁹ *Venku v. Mahalinga* (1888), 11 Mad. 393; *Muttukannu v. Paramasami* (1888), 12 Mad. 214.

¹⁰ *Venkatachellum v. Venkataswamy*, Mad. dec. of 1856, p. 65.

¹¹ Strange's "Manual," para. 99.

¹² *Hencover Bye (Doe dem) v. Hancower Bye* (1818), 2 Morl. Dig. 133.

¹³ *Mathura Naikin v. Esu Naikin* (1880), 4 Bom. 545.

¹⁴ *Manjamma v. Sheshgiri Rao* (1902), 26 Bom. 491, at p. 495; 4 Bom. L. R. 116.

or otherwise disposed of, or received with intent that she shall be employed or used for the purpose of prostitution (and this generally happens in the cases of so-called adoptions by dancing-girls or prostitutes¹) the disposition or reception of the girl is punishable by the Penal Code,² and therefore, as being prohibited by law, no effect can be given to it by the Court.³

"In *Venku v. Mahalinga*,⁴ Mustusami Ayyar, J., said, "We may set aside or decline to enforce a contract or disposition which has for its immediate object the prostitution of a minor during her minority so as to leave her no choice of married life when she is over sixteen years. The policy of the Penal Code, as it seems to me, is not to obliterate altogether the line of distinction between the province of ethics and that of law, but to protect the chastity of minors and to assure to them the freedom of choosing married life when they attain their age, whether they are the natural or adopted daughters of dancing women, and to leave otherwise the incidents of their legal *status* as daughters untouched, whether the parties concerned are dancing women or ordinary Hindus."

Effect was given to an adoption by a prostitute dancing-girl in *Narasanna v. Gangu*.⁵

DISPUTES AS TO ADOPTION.

Suits in which question of adoption arises.

A question as to the factum or validity of an adoption would arise in a suit or other proceeding in which the alleged adopted son is asserting his title as such, or in a suit brought against him for the purpose of disputing his title as an adopted son, or in a suit to recover property held by him by virtue of such alleged title, or in a suit for the purpose of preventing him from acting as adopted son.⁶

Who is entitled to dispute adoption.
Adoption by widow.

An alleged adoption may be disputed by any person whose interests are affected by it.⁷

A suit to declare the invalidity of an adoption by a widow can only, as a general rule, be brought by the presumptive reversionary heir.⁸ Such a suit may be brought by a more

¹ See *Mathura Naikin v. Esu Naikin* (1880), 4 Bom. 545, at p. 570.

² Act XLV. of 1860, ss. 372, 373. See *Queen-Empress v. Ramanna* (1889), 12 Mad. 273.

³ *Sanjivi v. Jalajakshi* (1899), 21 Mad. 229; *Kamalakshi v. Ramasami Chetti* (1895), 19 Mad. 127; see *Manjamma v. Sheshgirirao* (1902), 26 Bom. 491; 4 Bom. L. R. 116.

⁴ (1888), 11 Mad. 393, at p. 402.

⁵ (1889), 13 Mad. 133.

⁶ In *Kalova v. Padapa Valad Bhujangrav* (1876), 1 Bom. 248, it was

held that a suit would lie to obtain an injunction restraining a person from performing the *Shraddh* or other ceremonies as an adopted son, or assuming the status of such adopted son.

⁷ See Specific Relief Act (I. of 1877), s. 42, *post*, p. 159.

⁸ *Thakoorain Sahiba v. Mohun Lall* (1867), 11 M. L. A. 386; 7 W. B. P. C. 25. See Specific Relief Act (I. of 1877), s. 42, *illus.*, *post*, p. 160, and cases, *post*, p. 159, note 1.

distant reversioner, if those nearer in succession are in collusion with the widow or have precluded themselves from interfering,¹ or refuse, without sufficient cause, to take steps,² or where the next reversioner has only a limited estate,³ but not otherwise.⁴

The nearer reversioner would apparently be a necessary party defendant to a suit brought by a more distant reversioner.⁵

In case of an adoption by the husband the widow or other heir may sue, at any rate after the death of the adoptive father. If the parties are governed by the Mitakshara law the coparceners may apparently sue at any time.

In case of the widow, or other limited heir,⁶ colluding, or being precluded from interfering, the presumptive reversionary heir may sue, and possibly in case such presumptive reversionary heir is also colluding, a more distant reversioner may sue.

Except in a case where he is estopped from so doing,⁷ a suit seeking to declare an alleged adoption to be invalid may be brought by the person making the adoption.

A declaratory decree will not be made as of right. Sec. 42 of the Specific Relief Act⁸ is as follows :—

“ Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or

Adoption by
adoptive
father.

Declaratory
decree.

Discretion of
Court as to
declarations of
status or right.

¹ *Anund Koer (Rani) v. Court of Wards* (1880), 8 I. A. 14, at pp. 22, 23; 8 Calc. 764, at pp. 772, 773; 8 C. L. R. 381, at pp. 385, 386; *Ramabai v. Rangrav* (1894), 19 Bom. 614; *Bhikaji Apaji v. Jagannath Vithal* (1873), 10 Bom. H. C. 351; *Brojo Kishoree Dassie v. Sreenath Bose* (1868), 9 W. R. C. R. 463; *Tarini Charan Chowdhry v. Saroda Sundari Dasi* (1869), 3 B. L. R. A. C. 145, at p. 157; 11 W. R. C. R. 468, at p. 470.

² *Gurulingaswami v. Ramalakshamma* (1894), 18 Mad. 53.

³ Cf. *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Calc. 62; 9 C. W. N. 25.

⁴ See *Anyaba v. Daji* (1895), 20 Bom. 202; *Gyanendro Nath Roy v. Lobongmunjori Dabi* (1882), 11 C. L. R. 198.

⁵ See *Anund Koer (Rani) v. Court*

of Wards (1880), 8 I. A. 14, at p. 23; 6 Calc. 764, at p. 772; 8 C. L. R. 381, at pp. 385, 386; *Gurulingaswami v. Ramalakshamma* (1894), 18 Mad. 53, at p. 58; *Ramabai v. Rangrav* (1894), 19 Bom. 614.

⁶ Such as a daughter.

⁷ *Post*, p. 166.

⁸ As, for instance, where the adopter has been induced to adopt by misrepresentation or coercion (*ante*, p. 146).

⁹ I. of 1877. The right to bring a suit to declare an adoption to be invalid independently of a claim to property has been incidentally recognized by the Legislature, see Court Fees Act (VII. of 1870, s. 2, art. 17, cl. 5) and in Limitation Acts (IX. of 1871, Sched. II., art. 129; XV. of 1877, Sched. II., art. 118; IX. of 1908, Sched. I., art. 118).

right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief.

Bar to such
declaration.

“Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

Explanation.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustration.

A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.¹

Suit to deter-
mine right to
take in adop-
tion.

It is unsettled whether, in exercise of the discretion given to it by the Specific Relief Act,² the Court can determine a right to take in adoption before the adoption has taken place.

The High Court of Bengal has held in an unreported case that a suit will lie for a declaration that a permission set up by a widow is false.³ The same Court decided in a case under the law before the Specific Relief Act came into force that such suit will not lie,⁴ relying on the decision of the Judicial Committee in *Sree Narain Mitter v. Kishen Soondory Dassee (Sreemutty)*,⁵ but in the last-named case the suit was merely to set aside certain deeds of gift and acceptance in adoption, under which the defendant took no interest. It may in many cases be desirable that the question should be determined in order to save the parties expense, to save the boy from the peril of his adoption being declared invalid, and to save the estate from the expense of maintaining the boy if the adoption be declared invalid.⁶ On the other hand, the boy would not be generally bound by the decree, as unless the adoption of a particular boy were contemplated, he could not be made a party to the suit.

¹ For an instance of such declaration before the passing of the Specific Relief Act, see *Kotamarti Sitaramayya v. Kotamarti Vandhanamara* (1874), 7 Mad. H. C. 351.

² S. 42, above.

³ *Rajputty Koeri (Mussummat) v. Nripabati (Mussummat)*, A. O. D. 4 of 1887, referred to in Sircar's "Law of Adoption," p. 434.

⁴ *Run Bahadoor Singh v. Lucho Coovar (Musst.)* (1879), 4 C. L. R. 270. See also *Rajcoomaree Dossee*

(Sreemutty) v. Nobocoomar Mullick (1856), Boul. 137; *Pearce Dayee (Mussumut) v. Hurbunsee Kooer (Mussumut)* (1873), 19 W. R. C. R. 127; *Subudra Chowdrayn (Mussumaut) v. Goluknath Chowdhry* (1843), 7 Ben. Sel. R. 143 (new edition, 166).

⁵ (1873), I. A. Sup. Vol. 149; 11 B. L. R. 171. S. C. *sub nomine*, *Nogendra Chundro Mitro v. Kishen Soondery Dossee (Sreemutty)*, 19 W. R. C. R. 133.

⁶ See *post*, pp. 196, 197.

There seems to have been no case in which an injunction ^{Injunction.} has been granted to restrain the performance of an adoption,¹ but provided the application be made in due time, and there be no objection on the merits, there seems no reason why a Court should not be justified in issuing such injunction.

There is authority that an *interim* injunction will not be granted to restrain the carrying out of an adoption.²

The Courts will not decree specific performance of an agree- <sup>Specific per-
formance of
agreement.</sup> ment to give or take in adoption,³ but the breach of such agreement would apparently give a right to damages.⁴

A decision as to the *factum* or validity of an adoption will ^{Res judicata.} only bind the persons who are parties to such decision and those claiming under them.⁵

It is unsettled whether a decision as to the fact, or the validity of an adoption in a suit between the alleged adopted son and a person who is, during the lifetime of the widow, the then immediate reversioner, will bind another person who may succeed to the reversion.⁶ The Madras High Court has held that he is bound,⁷ but this is not in accordance with the views of the other High Courts.

When the question is decided, after the death of the widow, in a suit between the adopted son and the person who would in the absence of the adopter be entitled to the reversion after her death, such decision would bind all persons subsequently interested in the estate as they would take through the person then entitled.

A decision in a litigation which has been *bonâ fide* instituted and conducted between the alleged adopted son and the widow in whom the property was vested would, in the case where the adoption was alleged to be made by the widow's husband, bind the reversioners. Probably it

¹ See *Assur Purshotam v. Ratanbai* (1888), 13 Bom. 56.

² *Ibid.*

³ Specific Relief Act (I. of 1877), s. 21b.

⁴ See *Sree Narain Mitter v. Kishen Soondoree Darsee* (1873), I. A. Sup. Vol. 149, at p. 160; 11 B. L. R. 171, at p. 188.

⁵ See Civil Procedure Code (Act V. of 1908), s. 11.

⁶ See *Bhagwanta v. Sukhi* (1899), 22 All. 33; *Chhidda Singh v. Durga Dei* (1900), 22 All. 332. This question was left undecided in *Brojo-kishoree Dassee v. Sreenath Bose* (1898), 9 W. R. C. R. 463, and in *Jumona Dassya Chowdhrahi v.*

Bamasoonderei Dassya Chowdhrahi (1876), 3 I. A. 72, at p. 84; 1 Calc. 289, at p. 296; 25 W. R. C. R. 235, at p. 239. The fact that a previous suit by a reversioner has been unsuccessful may be a reason for refusing a mere declaratory decree (see *ante*, pp. 159, 160) at the suit of another reversioner. The idea that a decision in a question of adoption had the effect of a judgment *in rem* was disposed of in *Kanhya Lall v. Radha Churn* (1867), B. L. R. F. B. R. 862; 7 W. R. C. R. 338. The matter is now dealt with by the Evidence Act (I. of 1872), s. 43.

⁷ *Chiruvolu Punnammar Chiruvolu Perrazu* (1906), 29 Mad. 390.

would also have the same effect where the adoption is said to have been made by the widow,¹ but she denies it.

A decision against one person claiming to be an adopted son would not bind another person claiming under another act of adoption.²

Under the Specific Relief Act,³ a declaration is only binding on the parties to the suit, persons claiming through them respectively, and where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees. As these expressions do not include the case of a subsequent reversioner, it seems clear that a declaration, or the refusal to grant one, in a suit by one reversioner does not bind another reversioner.

Limitation of
suit to declare
adoption
invalid.

A suit "to obtain a declaration that an alleged adoption is invalid, or never, in fact, took place," must be brought within "six years" from the time "when the alleged adoption becomes known to the plaintiff."⁴

This provision is confined to declaratory suits, and does not alter the limitation for suits for possession of property.⁵

There was a conflict of authority as to whether the effect of this provision is to bar suits for possession of property against a person holding under an alleged adoption which are brought more than six years after the alleged adoption becomes known to the plaintiff, or whether it is confined to cases where a declaration only can be obtained, and there is no present right to substantive relief.⁶

The Madras⁷ and Bombay⁸ High Courts held that it has the

¹ See *Katama Natchiar v. Rajah of Shivagunga* (1864), 9 M. I. A. 543, at p. 608; 2 W. R. P. C. 31, at p. 37.

² See *Anundmoyee Chowdhoorayan (Mussumauth) v. Sheeb Chunder Roy* (1862), 9 M. I. A. 291, at p. 306; 2 W. R. P. C. 19, at p. 21; Marsh, 455, at p. 460.

³ I. of 1877, s. 43.

⁴ Act IX. of 1908, Sched. I., art. 118. "'Plaintiff' includes also any person from or through whom a plaintiff derives his right to sue," s. 3. *Ayyadori Pillai v. Solai Ammal* (1901), 24 Mad. 405.

⁵ *Tirbhuvan Bahadur Singh (Thakur) v. Rameshar Baksh Singh (Raja)* (1906), 33 I. A. 156; 28 All. 727; 10 C. W. N. 1065; *Muhammad Umar Khan v. Muhammad Niaz-ud-din Khan* (1911), 39 I. A. 19; 16 C. W. N. 458; 14 Bom. L. R. 182. See *Chunni Lal v. Setaram* (1911), 34 All. 8. Limitation would run from the death of the widow who purports

to adopt, see *Bhagwat Pershad v. Murari Lall* (1916), 15 C. W. N. 524, *post*, p. 488.

⁶ As where the widow is alive, and the reversioner seeks to have it declared that the adoption made by her is not valid. See Specific Relief Act (I. of 1877), s. 42, *ante*, pp. 159, 160. This question was raised, but not determined, in *Luchmun Lal Chowdhry v. Kanhya Lal Mowar* (1894), 22 I. A. 51; 22 Calc. 609.

⁷ *Parvathi Ammal v. Saminatha Gurukul* (1896), 20 Mad. 40. Cf. *Ratnamasari v. Atilandammal* (1902), 26 Mad. 291.

⁸ *Shrinivas Murar v. Hanmant Chavdo Deshapande* (1899), 24 Bom. 260, overruling *Harilal Prantal v. Bai Rewa* (1895), 21 Bom. 376; *Fannyamma v. Manjaya Hebbar* (1895), 21 Bom. 159, and *Padajirav v. Ramrav* (1888), 13 Bom. 160, which last case was decided under Art. 119 of the Schedule (*post*, p.

former effect, but in Calcutta¹ and Allahabad² a contrary view was expressed.

The Madras decision was based upon two judgments of the Judicial Committee³ with reference to the construction of Act 129 of the 2nd Schedule of an earlier Limitation Act (IX. of 1871). That article provided a limitation for suits to "set aside an adoption," and was held to be equally applicable to suits seeking a mere declaration that the adoption was invalid, and to suits which sought the possession of property held under colour of an alleged adoption. Although the phraseology of that article differs from that of the article now in force, which in terms contemplates only a declaratory suit,⁴ there are observations of the Judicial Committee which were held to be equally applicable to the present law.⁵ This rule of limitation had no application to a case where the proceeding or document is on its face no obstacle to the title of the heir, as, for instance, where a woman adopts to herself and not to her husband.⁶

If the right of the nearest reversioner for the time being to contest an adoption by the widow is allowed to become barred by limitation as against him, this will not bar the similar rights of the subsequent reversioners.⁷

The right to bring such suit would be barred where the person claiming under an alleged adoption has held the property for more than twelve years adversely to the widow of his adoptive father⁸ or to the plaintiff.

A suit "to obtain a declaration that an adoption is valid" must be brought within "six years" from the time "when the rights of the adopted son as such⁹ are interfered with."¹⁰

Adverse possession.

Limitation of suit to declare adoption valid.

164). *Ramchandra Vinayak Kulkarni v. Narayan Babaji* (1903), 27 Bom. 614; *Barot Naran v. Barot Jesang* (1900), 25 Bom. 26.

¹ *Ram Chandra Mukerjee v. Ranjit Singh* (1899), 27 Cal. 242, at pp. 253-255; 4 C. W. N. 405, at pp. 411-413; *Parbhu Lal (Lala) v. Mylne* (1887), 14 Cal. 401; *Baikanta Chandra Roy Chowdhury v. Kahi Charran Roy Chowdhury* (1904), 9 C. W. N. 222. Cf. *Jagannath Prasad Gupta v. Runjit Singh* (1897), 25 Cal. 354.

² *Lali v. Murlidhar* (1901), 24 All. 195; *Nathu Singh v. Gulab Singh* (1895), 17 All. 167; *Basdeo v. Gopal* (1886), 8 All. 644; *Ganga Sahai v. Lekhraj Singh* (1886), 9 All. 253, at pp. 267-269. *Contrà Inda v. Jehan-gira*, All. Weekly Notes, 1890, p. 241.

³ *Jagadamba Chowdhurani v. Dak-hina Mohun* (1886), 13 I. A. 84; 13 Cal. 308; *Moresh Narain Moonshee v. Taruck Nath Mottra* (1892), 20 I. A. 30; 20 Cal. 487.

⁴ Cf. Art. 119, which also speaks of a suit for a declaration, but apparently contemplates substantive relief on the ground of the plaintiff's rights being interfered with.

⁵ *Jagadamba Chowdhurani v. Dakhina Mohun* (1886), 13 I. A. 84, at p. 95; 13 Cal. 308, at pp. 320, 321.

⁶ *Raj Bahadoor Singh v. Achumbit Lal* (1879), 6 I. A. 110; 6 C. L. R. 12; *Luchman Lal Chowdhury v. Kan-hya Lal Mowar* (1894), 22 I. A. 15; 22 Cal. 609.

⁷ *Bhagwanta v. Sukhi* (1899), 22 All. 33. Cf. *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Cal. 62; 9 C. W. N. 25. See *ante*, p. 161.

⁸ Act IX. of 1908, Sched. I., art. 144; *Ghandarap Singh v. Lachman Singh* (1888), 10 All. 485.

⁹ See *Gangubai v. Tarabai* (1902), 26 Bom. 720.

¹⁰ Act IX. of 1908, Sched. I., art. 119.

It has been held by the High Courts of Bengal¹ and the North-west Provinces² that this article does not prevent a suit for possession by a person claiming as an adopted son, even though it be brought more than six years after his rights have been interfered with. This view is, it is submitted, correct.³ A different view has been accepted in Bombay.⁴ In Madras the High Court has differed on this question.⁵ The section clearly does not bar a suit in which the plaintiff claims to succeed independently of the alleged adoption.⁶

Adverse
possession.

Where time has begun to run before the adoption as in the case of the widow being dispossessed, the adopted son may be barred by adverse possession,⁷ but in a suit claiming property alienated by the widow before the adoption, time does not begin to run before the adoption.⁸

Election.

Where a person, entitled to dispute an adoption, is benefited in the same character by a will, or other disposition of property, which benefits the person adopted, he must elect whether to take under the will, or other disposition, or against it.

"A principle not peculiar to English law, but common to all law, which is based on the rules of justice, namely . . . that a party shall not, at the same time, affirm and disaffirm the same transaction—affirm it as far as it is for his benefit, and disaffirm it as far as it is to his prejudice." ⁹

Burden of
proof.

A person, whose title depends upon an adoption, must, in a contest between him and the person who would succeed in the absence of such adoption, prove the fact of the adoption,¹⁰

¹ *Jagannath Prasad Gupta v. Runjit Singh* (1897), 25 Calc. 354.

² *Lali v. Murlidhar* (1901), 24 All. 195; *Chandania v. Saligram* (1903), 26 All. 40.

³ See ante, pp. 162, 163.

⁴ See *Shrinivas Murar v. Hanmant Chavdo Deshapande* (1899), 24 Bom. 260, differing from *Padajirav v. Ramrav* (1888), 13 Bom. 160; *Laxmana v. Ramappa* (1907), 32 Bom. 7; 9 Bom. L. R. 1054.

⁵ *Ratnamasari v. Akilandammal* (1902), 26 Mad. 291.

⁶ See *Gangabai v. Tarabai* (1902), 26 Bom. 720.

⁷ *Gobind Chandra Sarma Mazoomdar v. Anand Mohan Sarma Mazoomdar* (1889), 2 B. L. R. A. C. 313.

⁸ *Moro Narayan Joshi v. Balaji Raghunath* (1894), 19 Bom. 809.

⁹ *Rungama v. Atchama* (1846), 4 M. I. A. 1, at p. 103; 7 W. R. (P. C.), 57, at p. 62. See Act X. of 1865, ss. 167-177, applied to certain Hindu

wills by Act XXI. of 1870, s. 2.

¹⁰ See Indian Evidence Act (I. of 1872), ss. 101-103; *Sootroogun Sutputty v. Sabitra Dye* (1834), 2 Knapp, 287; 5 W. R. P. C. 109; *Chowdry Pudem Singh v. Koer Oodey Singh* (1869), 12 M. I. A. 350, at pp. 356, 357; 2 B. L. R. (P. C.), 101, at p. 104; 12 W. R. P. C. 1, at pp. 2, 3; *Kishori Lal v. Churni Lal* (1908), 36 I. A. 9; 31 All. 116; 13 C. W. N. 370; 11 Bom. L. R. 196; *Lal Kunwar (Musammatt) v. Charanji Lal* (1909), 37 I. A. 1; 14 C. W. N. 285; 12 Bom. L. R. 244; *Ramprotab Misser v. Abhilak Misser* (1878), 3 C. L. R. 170, at p. 174; *Hur Dyal Nag v. Roy Krishno Bhoomick* (1875), 24 W. R. C. B. 107; *Tarni Charan Chowdhry v. Saroda Sundari Dasi* (1869), 3 B. L. R. (A. C.) 145, at pp. 158, 159, 11 W. R. C. R. 468, at p. 474; *Bisessur Chuckerbutty v. Ram Joy Mozoomdar* (1865), 2 W. R. C. R. 326, at p. 328; *Roopmonjoore*

the performance of the ceremonies¹ (if any) which may be necessary,² and such facts as are necessary to establish its validity.³ If the adoption was by a widow, who could not adopt without permission, he must prove the fact of such permission having been given.⁴

The burden of proving the adoption is on the person alleging it, in the unusual case of the adoption being denied by the person alleged to be adopted.⁵

Where the plaintiff claims property as heir, and is unable to establish his relationship, it is unnecessary for the defendant to prove his adoption.⁶

In certain summary proceedings a *de facto* adoption might be acted upon until set aside in a properly constituted suit.⁷

Where the fact of the adoption was admitted, and it was alleged that the natural father had lost his right to give in adoption, it was held the burden of proving such loss is upon the persons alleging it.⁸

There is authority that in a suit which merely seeks to declare invalid an alleged adoption to be invalid the burden of proof is upon the person seeking to obtain such declaration,⁹ but there is also

Chowdranee v. Ramlall Sircar (1864), 1 W. R. C. R. 145, at p. 147; *Kenchawa v. Ningupa* (1867), 10 Bom. H. C. 265, note.

¹ *Oomrao Singh (Thakoor) v. Mehtab Koonwer (Thakooranee)* (1868), 3 Agra, 103A. See *ante*, pp. 144, 147-149.

² See *ante*, pp. 147-149.

³ *Oomrao Singh (Thakoor) v. Mehtab Koonwer (Thakooranee)* (1868), 3 Agra, 103A. In *Rango Balaji v. Mudieyppa* (1898), 23 Bom. 296, at p. 303, it was held that the person setting up an adoption was required to establish the death of the natural son of his adoptive father at the time of the adoption.

⁴ *Chowdry Pudum Singh v. Koer Oodey Singh* (1869), 12 M. I. A. 350, at p. 356; 2 B. L. R. (P. C.) 101, at p. 104; 12 W. R. (P. C.) 1, at pp. 2, 3; *Har Shankar Partab Singh v. Lal Raghuraj Singh* (1907), 34 I. A. 129; 29 All. 519; 11 C. W. N. 841; *Kishori Lal v. Chunni Lal* (1908), 36 I. A. 9; 31 All. 116; 13 C. W. N. 370; 11 Bom. L. R. 196; *Hur Dyal Nag v. Roy Krishto Bhoomick* (1875), 24 W. R. C. R. 107; *Tarini Charan Chowdhry v. Saroda Sundari Dasi* (1869), 3 B. L. R. (A. C.) 145, at pp. 158, 159; 11 W. R. C. R. 468,

at p. 474; *Kripa Moyee Debia v. Goluck Chunder Roy* (1865), 4 W. R. C. R. 78; *Roopmonjooree Chowdranee v. Ramlall Sircar* (1864), 1 W. R. C. R. 145, at p. 147; *Oomrao Singh (Thakoor) v. Mehtab Koonwer (Thakooranee)* (1868), 3 Agra, 103A.

⁵ *Chandra Kunwar (Rani) v. Narpat Singh (Chaudhri)* (1906), 34 I. A. 27; 29 All. 184; 11 C. W. N. 321; *Har Shankar Partab Singh v. Lal Raghuraj Singh* (1907), 34 I. A. 129; 29 All. 519; 11 C. W. N. 841.

⁶ *Kalikishore Dutt Gupta Mozomdar v. Bhusan Chunder* (1890), 18 Calc. 201.

⁷ See *Nunkoo Singh v. Purn Dhun Singh* (1869), 12 W. R. C. R. 356, which was a case under the Certificate Act (XXVII. of 1860). See *Ramprotab Misser v. Abhilak Misser* (1878), 3 C. L. R. 170, at p. 173.

⁸ *Kusum Kumari Roy v. Satya Ranjan Das* (1903), 30 Calc. 999; 7 C. W. N. 784.

⁹ *Asharfi Kunwar v. Rup Chand* (1908), 30 All. 197; *Brojo Kishoree Dassee v. Sreenath Bose* (1868), 9 W. R. C. R. 463, at p. 467; *Gooroo Prosunno Singh v. Nil Madhub Singh* (1873), 21 W. R. C. R. 84. See *ante*, pp. 159, 160.

authority to the contrary.¹ It is submitted that the latter view is correct.

Estoppel. A person, who is otherwise entitled to dispute an adoption, may be estopped from disputing it, although the same adoption may be liable to be disputed by other persons who are not so estopped. Estoppel operates merely as a personal disqualification, and does not otherwise affect the validity of the adoption.²

Evidence Act,
s. 115.

The Indian Evidence Act,³ s. 115, enacted as follows:—

“Where one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief,⁴ neither he nor his representative⁵ shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

For instance, a widow representing to the natural father that she had a power to adopt, and thereby inducing him to give his son in adoption, would be estopped from thereafter denying the power.⁶

Allowing the thread ceremony and marriage to be performed in the adoptive family, and otherwise allowing the youth to act as an adopted son, would amount to an estoppel.⁷

Good faith. Active participation in the adoption may also operate as an estoppel.⁸ A person may be so estopped, although he was acting in good faith, or without a full knowledge of the circumstances, or was under a mistake or misapprehension.⁹

The person taking in adoption would generally, in the absence of fraud or coercion, be estopped from denying the adoption,¹⁰ but where there has

¹ *Rajagopala Reddy v. Nattu Govinda Reddy* (1910), 34 Mad. 329.

² See *Parvatibayamma v. Ramakrishna Rau* (1894), 18 Mad. 145, at p. 146.

³ Act I. of 1872.

⁴ *Yashwant Putti Shenvi v. Radhabai* (1889), 14 Bom. 312.

⁵ This would not include an auction purchaser at a sale of property belonging to the person estopped. *Parbhu Lal (Lala) v. Mylne* (1887), 14 Calc. 401.

⁶ *Kannammal v. Virasami* (1892), 15 Mad. 486; *Dharam Kunwar v. Balwant Singh* (1908), 30 All. 549.

⁷ *Santappayya v. Rangappayya* (1894), 18 Mad. 397; *Dharam Kunwar v. Balwant Singh* (1908), 30 All. 549.

⁸ *Sadashiv Moreswar Ghate v. Hari Moreswar Ghate* (1874), 11 Bom. H. C. 190; *Vyas Chimanlal v. Vyas Ramchandra* (1899), 24 Bom. 473, at p. 481; 2 Bom. L. R. 163; *Chintu v. Dhondu*, 11 Bom. H. C. 192, note.

⁹ *Sarat Chunder Dey v. Gopal Chunder Laha* (1892), 19 I. A. 203, at p. 215; 20 Calc. 296, at p. 310, overruling *Ganga Sahai v. Hira Singh* (1880), 2 All. 809, and *Vishnu Nambudri (Eranjoli Illath) v. Krishnan Nambudri (Eranjoli Illath)* (1883), 7 Mad. 3.

¹⁰ See *Ravji Vinayakrav Jagannath Shankarsett v. Lakshmbai* (1887), 11 Bom. 381, at p. 396; *Sukhbasi Lal v. Guman Singh* (1879), 2 All. 366; *Chintu v. Dhondu* (1873), 11 Bom.

been no mis-statement,¹ or conduct equivalent thereto, or where the mis-statement has not been acted upon,² there can be no estoppel.

A person is not estopped from denying an adoption merely because he had previously secured succession to properties by setting up that adoption, when it appears that his claim as adopted son was not opposed by the person as against whom he is said to be estopped.³

The acts of a Hindu female, who "is acting without the guidance of a disinterested adviser, cannot prejudice her."⁴

The misrepresentation to operate as an estoppel must apparently be **Matters of law.** of a matter of fact. An erroneous expression of opinion that an adoption was valid in law could not apparently lead to an estoppel, nor could a person apparently be estopped from asserting the state of the law.⁵

In *Parvatibayamma v. Ramakrishna Rau*,⁶ it was laid down on the authority of *Gopalayyan v. Raghupatiayyan*,⁷ that "the claimant has to show that by a course of conduct long continued on the part of the family which has purported to affiliate him, his situation in his original family has been altered so that it would be impossible to restore him to it." This limitation to the doctrine of estoppel is not, it is submitted, justified by the terms of sec. 115 of the Evidence Act. There seems to have been no estoppel in that case, as the representation, if made, was neither believed nor acted upon.

Mere acquiescence, even presence at the adoption, does not create an **Acquiescence.** estoppel,⁸ and cannot alter rights unless the acquiescence extends to the period provided by the law of limitation.⁹

The fact of the adoption, and of the power (if any), and of **Mode of proof.** the circumstances necessary to establish the validity of the adoption, must be proved in the same way as any other fact. There are no special rules of evidence applicable.

H. C. p. 192, note; *Chitko Raghunath Rajadiksh v. Janaki* (1874), 11 Bom. H. C. 199.

¹ See *Surendrakeshav Roy v. Door-gasundari Dassee* (1892), 19 I. A. 108, at p. 128; 19 Calc. 513, at p. 532; *Tayamman v. Sashachalla Naiker* (1865), 10 M. I. A. 429, at pp. 433, 434.

² See *Kuverji v. Babai* (1890), 19 Bom. 374; *Parvatibayamma v. Ramakrishna Rau* (1894), 18 Mad. 145, at p. 149.

³ *Har Shankar Partab Singh v. Lal Raghuraj Singh* (1907), 34 I. A. 129; 29 All. 519; 11 C. W. N. 841.

⁴ *Tayamman v. Sashachalla Naiker* (1865), 10 M. I. A. 429, at p. 433. See ante, p. 146, note 12.

⁵ See *Gopee Lall v. Chundraraoee Buhoojee (Musamat Sree)* (1872), I. A. Sup. Vol. 131, at p. 133; 11 B.

L. R. 391, at p. 395; 19 W. R. C. R. 12, at p. 13; *Kuverji v. Babai* (1890). 19 Bom. 374, at pp. 390, 391. See *Rajnarain Bose v. Universal Life Assurance Company* (1881), 7 Calc. 594.

⁶ (1894), 18 Mad. 145, at p. 148 (see also pp. 151, 152).

⁷ (1873), 7 Mad. H. C. 250.

⁸ *Gurulingaswami v. Ramalakshamma* (1894), 18 Mad. 53, at p. 60; *Papamma v. Appa Rau* (1893), 16 Mad. 384, at p. 391.

⁹ See *Uda Begam v. Imam-ud-din* (1875), 1 All. 82; *Taruck Chunder Bhuttacharjee v. Hurro Sunkur Sandyl* (1874), 22 W. R. C. R. 267; *Rajan v. Basuwa Chetti* (1865), 2 Mad. H. C. 428; *Ram Rau v. Raja Rau* (1864), 2 Mad. H. C. 114; *Peddammuthukaty v. N. Timma Reddy* (1864), 2 Mad. H. C. 270.

The Court must carefully and strictly examine the evidence as to the completion of the act of adoption, and as to the facts which are necessary to validate it.¹

Aoquiescence by the person entitled to dispute an adoption, or by other members of the family, is some evidence of the fact of the adoption. Its value as such must depend upon the circumstances. Where it has arisen from an imperfect knowledge of the facts it can be of no value.²

A statement as to the existence of the power by the person alleged to have given it is evidence in support of it.³

As to statements by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, when these statements relate to the existence of relationship by adoption, see the Indian Evidence Act I. of 1872, sec. 32 (5), (6).

A statement amounting to an admission by the person alleged to have been adopted will be evidence against him requiring explanation.⁴

An ancient report of a *panchayet* as to the pedigree of a family has been held to establish an adoption which was not then disputed.⁵

A tradition in a *wajib-ul-arz* has been acted upon by the Judicial Committee.⁶

"It may be desirable carefully to examine cases of possible fraud, yet . . . instruments which are proved by all the attesting witnesses, and against which there is no evidence on the other side, ought not to be set aside and treated as nothing, on a mere suspicion of perjury and forgery."⁷

After such a lapse of time as makes it impossible, or difficult, to obtain direct evidence of the adoption, or of the performance of the necessary ceremonies, or of the giving of the necessary permission, evidence of recognition by the adoptive parents, or by other members of the family, or of treatment as an adopted son by permitting him to perform the family worship, or to share in the inheritance, or otherwise, may be sufficient to establish an adoption, or, at any rate, to render slight evidence sufficient,⁸

¹ *Imrit Konwur v. Roop Narain Singh* (1880), 6 C. L. R. 76, at p. 823; *Kenchawa v. Ningupa* (1867), 10 Bom. H. C. 265, note. See *Roop-monjooree Chowdranee v. Ramlall Sircar* (1864), 1 W. R. C. R. 145; *Sootroogun Sutputhy v. Sabitra Dye* (1835), 2 Knapp, 287; 5 W. R. P. C. 109; *Huradhrn Mookurjia v. Muthoranath Mookurjia* (1849), 4 M. I. A. 414, at p. 425; 7 W. R. P. C. 71.

² See *Rungama v. Atchama* (1846), 4 M. I. A. 1, at p. 103; 7 W. R. P. C. 57, at p. 62. See Act I. of 1872, s. 50.

³ Indian Evidence Act (I. of 1872), ss. 21, 32 (5), *Kishen Sunker Dutt v. Moha Mya Dossee*, W. R. 1864, C. R. 210.

⁴ See *Chandra Kunwar (Rani) v.*

Narpat Singh (Chaudhri) (1906), 34 I. A. 27; 29 All. 184; 11 C. W. N. 320; 9 Bom. L. R. 267.

⁵ *Ajabsing v. Nanabhau Valad Dhansing Raul* (1898), 26 I. A. 48; 3 C. W. N. 130.

⁶ *Achal Ram (Lal) v. Kazim Husain Khan (Raja)* (1905), 32 I. A. 113; 27 All. 271; 9 C. W. N. 477.

⁷ *Kalichandra Chowdhry v. Shish-chandra Bhaduri* (1870), 6 B. L. R. 501, at p. 508; 15 W. R. P. C. 12, at p. 14. See *Chundernath Roy (Rajah) v. Gobindnath Roy (Koor)* (1872), 11 B. L. R. 86, at p. 98; 18 W. R. 221, at pp. 222, 223.

⁸ See *Rup Narain v. Gopal Devi (Mussamat)* (1909), 36 I. A. 103; 36 Calc. 780; 13 C. W. N. 920; 11 Bom. L. R. 833; *Rajendro Nath*

and in any case will, it is submitted, be admissible in support of the adoption,¹ but such evidence cannot establish an adoption which is in law invalid.²

A person who asks the Court to presume that an adoption did take place, must establish an initial probability that the adoption was likely to have been validly made and that the conduct of the partners cognizant of the facts had been at least consistent with such an hypothesis.³

Where there is conflicting evidence upon the fact of an adoption, much Probabilities. must depend upon the probabilities of the case to be collected from the admitted or proved facts, but such probabilities do not take the place of evidence.

The fact that the person alleged to have adopted was childless, and Aged adopter. advanced in years, and had despaired of having male issue;⁴ or the fact that he was anxious to deliver himself from *Put*,⁵ give rise to a probability Solicitude as to future state. that he wished to adopt.

The fact that the alleged adoptive father or mother was at enmity with Enmity with heir. the reversioner might also render an adoption probable.⁶

Holder v. Jogendro Nath Banerjee (1871), 14 M. I. A. 67, at pp. 76, 77; 7 B. L. R. 216, at pp. 227, 228; 15 W. R. P. C. 41, at pp. 44, 45; *Run-gama v. Atchama* (1846), 4 M. I. A. 1, at p. 105; 7 W. R. P. C. 57, at p. 62; *Vyas Chimanlal v. Vyas Ramchandra* (1899), 24 Bom. 473; 2 Bom. L. R. 163; *Ramalinga Pillai v. Sadasivu Pillai* (1864), 9 M. I. A. 510, at p. 519; 1 W. R. P. C. 25, at p. 26; *Anandav Sivaaji v. Ganesh Eshvanti Bokil* (1863), 7 Bom. H. C. App. xxxiii.; *Sabo Bewa v. Nahagun Maiti* (1869), 2 B. L. R. App. 51; 11 W. R. C. R. 380; *Nittianand Ghose v. Krishna Dyal Ghose* (1871), 7 B. L. R. 15 W. R. C. R. 300; *Perkash Chu Roy v. Dhunmonnee Dassee*, Ben. S. D. of 1853, p. 96; *Hur Dyal Nag v. Roy Krishto Bhoomick* (1875), 24 W. R. C. R. 107; *Herasutollah (Chowdhry) v. Brojo Soondur Roy* (1872), 18 W. R. C. R. 77, at p. 80; *Tincourie Chatterjee v. Denonath Banerjee*, W. R. 1864. C. R. 155; *Roopmonjoore Chowdranee v. Ramlall Sircar* (1864), 1 W. R. C. R. 145; *Mohendro Lall Mookerjee v. Rookiney Dabee* (1864), Coryton, 42, at p. 46.

¹ See Indian Evidence Act (I. of 1872), s. 50. In that section "it will be noted that the words 'by blood marriage and adoption' have not been inserted after the word 'relationship' by Act XVII. of 1872, as in the case of s. 32, cl. (5)

and (6). Illustration (a) refers to the case of marriage, but relationship is not mentioned," Ameer Ali and Woodroffe's "Law of Evidence," 1st ed., p. 360. This would seem to show that the conduct of relations would not be admissible as evidence in the case of adoption, but the Indian Courts have undoubtedly been in the habit of admitting such evidence. With two exceptions (*Hur Dyal Nag v. Roy Krishto Bhoomick* and *Vyas Chimanlal v. Vyas Ramchandra*), the decisions in note 4 above were given before the passing of the Indian Evidence Act.

² See, however, *Bhagwat Pershad v. Murari Lall* (1910), 15 C. W. N. 524.

³ *Har Shankar Partab Singh v. Lal Raghuraj Singh* (1907), 34 I. A. 129; 29 All. 519; 11 C. W. N. 841.

⁴ *Huradhun Mookurjia v. Muthoranath Mookurjia* (1849), 4 M. I. A. 414, at p. 425; 7 W. R. P. C. 71. See *Roopmonjoore Chowdranee v. Ramlall Sircar* (1864), 1 W. R. C. R. 144, at p. 150; *Bistooprea Patmohadea (Ranee) v. Bascodeb Dull Bewartee Patnaik* (1865), 2 W. R. C. R. 232, at p. 235.

⁵ *Huradhun Mookurjia v. Muthoranath Mookurjia* (1849), 4 M. I. A. 414, at pp. 425, 426; 7 W. R. P. C. 71.

⁶ *Soondur Koomaree Debbēa v. Gudadhur Pershad Tewarree* (1858);

Religious
duty.

The religious duty to adopt a son, which is said to be incumbent upon every childless Hindu,¹ is also a circumstance to be taken into consideration,² but by itself it has not much force, having regard "to the fact that childless Hindus die daily without having fulfilled this obligation, or made provision for its fulfilment after their death."³

Absence of
notices and
ceremonials.

On the other hand, the absence of notices to relations and of ceremonials may be evidence against the probability of the fact of adoption. In *Sootroogun Sutputty v. Sabitra Dye*,⁴ the Judicial Committee say, "But although neither written acknowledgments, nor the performance of any religious ceremonials, are essential to the validity of adoptions, such acknowledgments are usually given, and such ceremonies observed, and notices given of the times when adoptions are to take place, in all families of distinction, as those of zemindars or opulent Brahmins, that wherever these have been omitted, it behoves the Court to regard with extreme suspicion the proof offered in support of an adoption. I would say, that in no case should the rights of wives and daughters be transferred to strangers, or more remote relations, unless the proof of adoption by which that transfer is effected be proved by evidence free from all suspicion of fraud, and so consistent and probable as to give no occasion for doubt of its truth."

Youth.

The youth,⁵ or vigour,⁶ of the alleged adopting father, and the consequent probability of male issue, may also be a circumstance rendering the adoption improbable.

Position of
parties, and
motives.

"In considering the validity of" powers to adopt, "it is of great importance, in the first place, to ascertain the position of the parties at the time when the instruments are alleged to have come into existence, and the motives which may have led to the execution of them."⁷

7 M. I. A. 54, at pp. 64, 67; 4 W. R. P. C. 116, at pp. 119, 120; *Raghunada (Sri) v. Brozo Kishoro (Sri)* (1876), 3 I. A. 154, at p. 177; 25 W. R. C. R. 291, at p. 295.

¹ *Ante*, p. 97.

² See *Raghunada (Sri) v. Brozo Kishoro (Sri)* (1876), 3 I. A. 154, at p. 177; 25 W. R. C. R. 291, at p. 295; *Roopmonjoree Chowdranee v. Ramlall Sircar* (1864), 1 W. R. C. R. 145, at pp. 150, 151; *Saradasoondery Dossee (S. M.) v. Tincowry Nundy* (1863), 1 Hyde, 223, at p. 249.

³ *Nilmadhub Doss v. Bishumber Doss* (1869), 13 M. I. A. 85, at p. 100; 3 B. L. R. (P. C.) 27, at p. 32; 12 W. R. P. C. 29, at p. 31. See *Gurulingaswami (Sri Balusu) v. Ramalakshamma (Sri Balusu)*, *Radhamohun v. Hardai Bibi* (1899), 26 I. A. 113, at p. 135; 23 Mad. 398, at p. 414; 21 All. 460, at p. 477; 3 C. W. N. 427, at p. 442; 1 Bom. L. R. 226.

⁴ (1835), 2 Knapp, 287, at p. 290; 5 W. R. P. C. 109. See also *Ony Kadarun v. Aroonachella*, Mad. dec. 1857, p. 93; *Bistooprea Patmohadea (Ranee) v. Basodeb Dull Bewartee Patnaik* (1865), 2 W. R. C. R. 232.

⁵ *Sootroogun Sutputty v. Sabitra Dye* (1835), 2 Knapp, 287; 5 W. R. P. C. 109.

⁶ ⁶ In *Saradasoondery Dossee (S. M.) v. Tincowry Nundy* (1863), 1 Hyde, 223, at p. 250, the Court said, "We agree . . . that a Hindu does not adopt in his lifetime, unless he is prepared to acknowledge that he has lost the power of procreation; for, if his wife is sterile, he may marry another wife, and is enjoined to do so after the lapse of a certain time."

⁷ *Soondur Koomaree Debbesa v. Gudadhur Pershad Tewarree* (1858), 7 M. I. A. 54, at p. 64; 4 W. R. P. C. 116, at p. 119.

A permission to give in adoption may be presumed,¹ but no such presumption may be made with reference to a permission to take in adoption.²

It has been held ³ that "when the Court is satisfied that the authority to adopt really was given, it will require comparatively slight proof of the performance of the ceremonies by which the adoption is completed. But the Court will not presume that permission was given merely because it is shown that the usual ceremonies were duly performed."

There may be a presumption that a widow does not adopt while in a condition of ceremonial impurity.⁴

¹ "Dattaka Chandrika," s. 1, para. 32.

² *Tarini Charan Chowdhry v. Saroda Sundari Dasi* (1869), 3 B. L. R. A. C. 145; 11 W. R. C. R. 468.

³ *Radhamadhub Gossain v. Radhabullub Gossain* (1862), 1 Hay, 311; 2 Ind. Jur. O. S. 5. See also *Mohendro Lall Mookerjee v. Rookiney Dabee*

(1864), Coryton, 42, at pp. 45, 46, where a similar observation was made, "When many years have passed and the person whose adoption is questioned has always been recognized as a son."

⁴ See *Ranganayakamma v. Alwar Setti* (1889), 13 Mad. 214, at p. 222.

CHAPTER IV.

PARENT AND CHILD (*continued*).

RESULTS OF DATTAKA ADOPTION.

Adoption operates as affiliation.

ADOPTION in the *Dattaka* form completely transfers the boy from the family of his natural father to that of his adoptive father, and, except as specially provided by the law,¹ he acquires, as from the date of the adoption,² all the rights, privileges, duties, and obligations of a son born to his adoptive father.³

When a married man having a son, is taken in adoption, the son does not acquire the *gotra* and a right of succession to the property of the family into which his father is adopted.⁴

When an adoption has been made by a widow, the rights of the adopted son do not date back to the death of his adoptive father.⁵

¹ As to the effect of the birth of a legitimate son after the adoption, see *post*, pp. 180-182. As to the restrictions placed upon an adopted son with regard to marriage and adoption in his natural family, see *ante*, pp. 40, 41, and *post*, p. 195.

² *Harek Chand Babu v. Bejoy Chand Mahatab* (1905), 9 C. W. N. 795, at p. 798; *Moro Narayan Joshi v. Balaji Raghunath* (1894), 19 Bom. 809, at p. 814; *Rambhat v. Lakshman Chintaman Mayalay* (1881), 5 Bom. 630, at p. 637; *Sudanund Mohapattur v. Soorjo Monce Debee* (1867), 8 W. R. C. R. 455; S. C. (1869), 11 W. R. C. R. 436. On appeal in this case this question did not arise, *Soorjomonee Dayee v. Suddanund Mohapattur*, I. A. Sup. Vol. 212; 12 B. L. R. 304; 20 W. R. C. R. 377; 9 Mad. Jur. 466; *Narain Mal v. Koor Narain Mytee* (1879), 5 Cal. 251.

³ *Pudma Coomari Debi v. Court of Wards* (1881), 8 I. A. 229, at p. 246; 8 Cal. 302, at p. 311. S. C. in Court

below, *Puddo Kumaree Debee v. Jugutkishore Acharjee* (1879), 5 Cal. 615; *Joykishore Chowdhry v. Panchoo Baboo* (1879), 4 C. L. R. 538; *Kali Komul Mozoomdar v. Uma Shunkur Moitra* (1883), 10 I. A. 138, at p. 149; 10 Cal. 232, at p. 237; 13 C. L. R. 379, at p. 381; S. C. in Court below, 6 Cal. 256, and 7 C. L. R. 145; *Rambhat v. Lakshman Chintaman Mayalay* (1881), 5 Bom. 630, at p. 637; *Teen-coivree Chatterjee v. Denonath Banerjee* (1865), 3 W. R. C. R. 49; *Juggurnath Sahaie (Maharajah) v. Mukhun Koonwur (Musst.)* (1865), 3 W. R. C. R. 24.

⁴ *Kalgavda Tavanappa v. Sonappa Tamangavda* (1909), 33 Bom. 669; 11 Bom. L. R. 797.

⁵ *Lakshmana Rau v. Lakshmi Ammal* (1881), 4 Mad. 160. See *Bamundoss Mookerjee v. Tarinee (Mussamut)* (1858), 7 M. L. A. 169, at p. 184; *Ganapati Ayyan v. Savi-thri Ammal* (1897), 21 Mad. 10, at p. 16; *Narain Mal v. Koor Narain*

An adoption *pendente lite* has the same effect as a birth *pendente lite*.¹

As to an adopted son's impurity on deaths and births, and as to his competency to perform Sraddha rites,² see Sircar's "Law of Adoption," p. 388.

The right of guardianship of an adopted son passes by the adoption from the natural parents to the adoptive parents.³ Right of guardianship.

A son adopted by a Hindu governed by the Mitakshara school of law acquires the same rights in ancestral property on adoption⁴ as would be possessed on birth by a natural son born to his adoptive father.⁵ Rights of survivorship.

Except where a son is born to his adoptive father subsequent to the adoption,⁶ an adopted son inherits to his adoptive father,⁷ Inheritance ex parte paterna. and to the relations, whether lineal or collateral, of his adoptive father to the same extent as he would have inherited if he had been born as a son to his adoptive father.⁸

As to the divesting of estates on adoption, see *post*, pp. 187-192.

Mytee (1879), 5 Calc. 251; *Moro Narayan Joshi v. Balaji Raghunath* (1894), 19 Bom. 809, at p. 814; cases collected in Morley's "Digest," vol. iii. 186.

¹ *Rambhat v. Lakshman Chintaman Mayalay* (1881), 5 Bom. 630, at p. 637.

² See "Dattaka Mimansa," s. 6, para. 50; "Dattaka Chandrika," s. 1, para. 25; s. 3, para. 17.

³ *Sree Narain Mitter v. Kishensoondory Dassee (Sreemutty)* (1873), 1 A. Sup Vol. 149, at p. 163; 11 B. L. R. 171, at p. 191; S. C. sub nomine *Nogendro Chundro Mitro v. Kishensoondory Dossee (Sreemutty)*, 19 W. R. C. R. 133, at p. 139; *Lakshmibai v. Shridhar Vasudev Takle* (1878), 3 Bom. 1. As to rights of guardianship, see *ante*, pp. 42-46, and *post*, pp. 207-211.

⁴ See *Rungama v. Atchama* (1846), 4 M. I. A. 1, at p. 103; 7 W. R. P. C. 57, at p. 67; *Sudanund Mohapattur v. Bonomallee* (1863), Marsh. 317; 2 Hay, 205; *Sudanund Mohapattur v. Soorjo Monee Debee* (1867), 8 W. R. C. R. 455; S. C. after remand (1869), 11 W. R. C. R. 436. On appeal this question did not arise, *Soorjomonee Dayee v. Suddanund Mohapattur* (1873), 1 A. Sup. Vol. 212; 12 B. L. R. 304; 20 W. R. C. R.

377; 8 Mad. Jur. 466.

⁵ See *post*, pp. 219, 220; *Heera Singh v. Buryar Singh* (1866), 1 Agra, 256.

⁶ See *post*, pp. 180-182.

⁷ *Raje Vyankatrav Anandrav Nimbalkar v. Jayavantrav* (1867), 4 Bom. H. C. A. C. 191.

⁸ *Pudma Coomari Debi v. Court of Wards* (1881), 8 I. A. 229; 8 Calc. 302; S. C. in Court below, *Puddo Kumaree Debee v. Juggukishore Acharjee* (1879), 5 Calc. 615; *Joykishore Chowdhry v. Panchoo Baboo* (1879), 4 C. L. R. 538; *Sumbhoochunder Chowdry v. Naraini Debia* (1835), 2 Knapp, 55; 5 W. R. (P. C.) 100; *Lakhmi Chand v. Gatto Bai* (1886), 8 All. 319; *Mokundo Lal Roy v. Bykunt Nath Roy* (1880), 6 Calc. 289; 7 C. L. R. 478; *Dinonath Mukerjee v. Gopal Churn Mukerjee* (1881), 9 C. L. R. 379; 8 C. L. R. 57; *Tara Mohun Bhuttacharjee v. Kripa Moyee Debia* (1868), 9 W. R. C. R. 423; *Raje Vyankatrav Anandrav Nimbalkar v. Jayavantrav* (1867), 4 Bom. H. C. A. C. 191; *Gourkurree Kubraj v. Rutnasuree Debia (Mussummut)* (1837), 6 Ben. Sel. R. 203 (new edition, 250); *Gooroopershad Bose v. Rashbehary Bose*, Ben. S. D. A. 1860, p. 411.

The right of the adopted son and of his heirs to inherit to the following relations by adoption has been established :—

1. Paternal grandfather.¹
2. Paternal uncle.²
3. First cousin of his father.³
4. First cousin of his grandfather.⁴
5. Father's brother's son.⁵
6. Father's daughter's son.⁶
7. Father's third cousin.⁷

8. The adopted son of the son of the brother of the man to whom the father of the claimant was adopted.⁸

Rights on
attaining
possession.

Where an adopted son ousts his adoptive father's widow, who has taken possession in ignorance of the adoption, he is entitled to receive such rents and profits which have been received, or might with due diligence have been received, between the death of his adoptive father and his getting possession, credit being given for the maintenance of the widow, funeral expenses, and all such expenditure as she might properly have made as widow, subject to any question as to limitation.⁹

Conversely the relations of the adoptive father will inherit to the adopted son in the same way as if he had been a son born to his adoptive father.

Title.

An hereditary title or honour passes to an adopted son, and his descendants, in the same way as to a legitimate son, or his descendants.

Inheritance *ex*
parte materna.

Where the adoption is by a husband alone,¹⁰ or in association with his wife, or one of his wives, or where it has been made to him by his wife with his concurrence, or after his death, the son inherits to the wife,¹¹ and to her relations,¹² in the same way as if he had been a son born to such wife.

¹ *Gourbullub v. Juggernath Persaud Mitter* (1824), Sir F. Macnaghten's "Considerations," p. 151.

² In *Sumbhoochunder Chowdry v. Naraini Debia* (1835), 3 Knapp, 65; 5 W. R. P. C. 100, it was held that the adopted son of the brother of the whole blood was entitled to inherit in preference to the son of a brother of the half-blood. *Kishennath Roy v. Hureegobind Roy*, Ben. S. D. A. 1859, p. 18.

³ *Dinonath Mukerjee v. Gopal Churn Mukerjee* (1881), 6 C. L. R. 379; 8 C. L. R. 57.

⁴ *Tara Mohun Bhattacharjee v. Kripa Moyee Debia* (1868), 9 W. R. 423.

⁵ *Lokenath Roy v. Shamasoondree*, Ben. S. D. A. 1858, p. 1863.

⁶ *Pudma Coomari Debi v. Court of*

Wards (1881), 8 I. A. 229; 8 Calc. 302.

⁷ *Mokundo Lall Roy v. Bykunt Nath Roy* (1880), 6 Calc. 289; 7 C. L. R. 478.

⁸ *Gourhurree Kubraj v. Rutnasuree Debia (Musummut)* (1837), 6 Ben. Sel. R. 203 (new edition, 350).

⁹ See *Dalel Kunwar v. Ambika Partap Singh* (1903), 25 All. 266.

¹⁰ See *Sham Kuar v. Gaya Din* (1876), 1 All. 255, at p. 257; "Dat-taka Mimansa," s. 1, para. 22.

¹¹ *Teencowree Chatterjee v. Denonath Banerjee* (1865), 3 W. R. C. R. 49; *Raje Vyankatray Anandray Nimbalkar v. Jayavantrav* (1867), 4 Bom. H. C. A. C. 191. *Contrâ* 2 Bom. S. A. R. 178, cited in "Norton's Leading Cases," I. 101.

¹² *Kalî Komul Mozoomdar v. Uma*

The right of the adopted son to inherit to the brother,¹ and father,² of the adoptive mother has been upheld.

Sir G. D. Banerjee ("Law of Marriage," pp. 349, 350, 409, 410) doubts whether in a *Mitakshara* case an adopted son will inherit his adoptive mother's mother's *stridhan* as he would thereby be preferred to the son of the deceased (*post*, p. 433), but he admits that there is no authority on the subject.

The adoptive mother³ and her relatives⁴ inherit to the adopted son in the same way as if she had been his natural mother.

Where an adoption is made by a husband in conjunction with one only of several wives, or after his death by one of several wives, the adopted son⁵ inherits only to that wife and her relations, his relationship to the other wives being that of a step-son.

It is unsettled whether, when a man adopts in conjunction with more than one wife,⁶ or where two or more widows adopt in accordance with a joint power,⁷ or where two or more widows adopt in Western India jointly,⁸ the adopted son inherits to all the widows so adopting and their relatives. It is submitted that this question depends upon whether such joint adoption is authorized by the law.⁹ The mere concurrence by a widow in an adoption by her co-widow would not, it is submitted, confer upon the adopted son any rights of inheritance to her or her relations.

It seems also to be unsettled, whether, when a husband adopts in spite of his wife's express dissent, the son inherits to her and to her relations.¹⁰

Shunkur Moitra (1883), 10 I. A. 138; 10 Calc. 232; 13 C. L. R. 379. This decision in effect overruled *Morun Moe Debeah v. Bejoy Kishto Gossamee* (1863), W. R. Sp. No. 121 (so far as this question is concerned), and *Chinnaramakristna Ayyar v. Minatchi Ammal* (1873), 7 Mad. H. C. 245. *Sham Kuar v. Gaya Din* (1876), 1 All. 255; *Surjokant Nundi v. Mohesh Chunder Dutt* (1882), 9 Calc. 70; *Radha Prasad Mullick v. Ranee Mani Dassee* (1906), 33 Calc. 947; 10 C. W. N. 695 (reversed on another point) (1908), 35 I. A. 118; 35 Calc. 896; 12 C. W. N. 729; 10 Bom. L. R. 604).

¹ *Kali Komul Mozoomdar v. Uma Shunkur Moitra* (1883), 10 I. A. 138; 10 Calc. 232; 13 C. L. R. 379.

² *Sham Kuar v. Gaya Din* (1876), 1 All. 255; *Surjokant Nundi v. Mohesh Chunder Dutt* (1882), 9 Calc. 70.

³ *Anandi v. Hari Suba Pai* (1909),

33 Bom. 404; 11 Bom. L. R. 641. See *Ramaswami Aiyar v. Venkataramatyan* (1879), 6 I. A. 196; 2 Mad. 91; *Annapurni Nachiar v. Forbes* (1899), 26 I. A. 246; 23 Mad. 1; 3 C. W. N. 730; *Jatindra Nath Chaudhuri (Rai) v. Amrita Lal Bagchi* (1900), 5 C. W. N. 20; *Lakhmi Chand v. Gatto Bai* (1886), 8 All. 319.

⁴ *Gungapersad Roy v. Brijessuree Chowdhraia*, Ben. S. D. A. 1859, p. 1091.

⁵ *Annapurni Nachiar v. Forbes* (1899), 26 I. A. 246; 23 Mad. 1; 3 C. W. N. 730. S. C. in Court below, (1895), 18 Mad. 277; *Kasheeshuree Debia v. Greenschunder Lahoree*, W. R. 1864, p. 71.

⁶ See *ante*, p. 107.

⁷ See *ante*, p. 110.

⁸ See *ante*, p. 121.

⁹ See *ante*, p. 110, note 9.

¹⁰ See Sircar's "Law of Adoption," p. 215.

Adopted son
of disqualified
man.

It has been said that a son adopted by a man who is disqualified from inheritance by reason of a personal disability, such as congenital blindness, impotence, or lameness,¹ cannot acquire greater rights than his adoptive father, and therefore cannot inherit to any one from whom the adoptive father was disqualified from inheriting,² but as a natural son of such disqualified person can, if he is an heir, inherit,³ it is submitted that the adopted son can under similar circumstances inherit.

There is, it is submitted, nothing to prevent his inheritance from his adoptive father⁴ and from his adoptive mother and her relations. According to the "Dattaka Chandrika"⁵ he is entitled to maintenance.

Descendants
of adopted
son.

The descendants of an adopted son born after adoption have the same rights of inheritance as the descendants of a legitimately begotten son.⁶

As to the case of an adoption of a married man having a son, see *post*, p. 184.

Rights no
greater than
those of son
born.

An adopted son does not, as such, acquire any rights greater than those of a begotten son.⁷

Adoption does
not alter
father's
powers over
property.

The adoption of a son does not interfere with the powers of the adoptive father to dispose of⁸ the property over which he has a power of disposition.

An adoptive father can defeat the rights of inheritance of his adopted son,⁹ whether the property held by him be partible or impartible.¹⁰ He

¹ *Ante*, p. 105, and *post*, pp. 354-356.

² Mayne's "Hindu Law," 7th ed., pp. 138, 139; Sircar's "Law of Adoption," pp. 202, 203, 419.

³ See *post*, p. 357.

⁴ Sutherland's "Synopsis," Stokes' "Hindu Law Books," pp. 664, 671; Mayne's "Hindu Law," 7th ed., p. 139.

⁵ Chap. ii. s. 10, paras. 9-11. This is disputed in Sircar's "Law of Adoption," p. 419.

⁶ *Kishennath Roy v. Hurreegobind Roy*, Ben. S. D. A. of 1859, p. 18; *Gourhurree Kubraj v. Rutnasuree Debia (Mussummut)* (1837), 6 Ben. Sel. R. 203 (new edition, 250).

⁷ *Venkata Surya Mahipati Rama Krishna Rao Bahadur (Sri Raja Rao) v. Court of Wards* (1899), 26 I. A. 83; 22 Mad. 383; 3 C. W. N. 415;

1 Bom. L. R. 277; *Bhoobun Moyee Debia v. Ram Kishore Acharj Chowdhry* (1865), 10 M. I. A. 279, at pp. 310, 311; 3 W. R. (P. C.) 15, at p. 18.

⁸ By will, gift, or transfer.

⁹ *Venkata Surya Mahipati Rama Krishna Rao Bahadoor (Sri Raja) v. Court of Wards* (1899), 26 I. A. 83, at p. 89; 22 Mad. 383, at p. 390; 3 C. W. N. 415, at p. 421; 1 Bom. L. R. 277; *Rungama v. Atchama* (1846), 4 M. I. A. 1, at p. 103; 7 W. R. 57, at p. 62; *Surendra Nath Ghose v. Kala Chand Banerjee* (1907), 12 C. W. N. 668; *Purshotam Shama Shenvi v. Vasudev Krishna Shenvi* (1871), 8 Bom. H. C. (O. C.) 196; *Sudanund Mohapattur v. Bonomallee* (1863), Marsh. 317; 2 Hay, 205.

¹⁰ *Venkata Surya Mahipati Rama Krishna Rao Bahadoor (Sri Raja Rao) v. Court of Wards* (1899), 26

can, in giving a power of adoption, require as a condition of the exercise of the power that the estate of his widow should not be interfered with,¹ and might apparently impose such other conditions as are not inconsistent with the provisions of the law of gifts and wills.²

In cases governed by the Hindu Wills Act, adoption, or the giving of a power of adoption, does not operate as a revocation of a will.³ Adoption does not revoke will.

There is some authority that in other cases a Hindu has no power to completely disinherit his adoptive son, and that a will making no provision for adopted sons would be invalidated by a power given subsequently,⁴ but it is submitted that there is no reason why an adoption should have greater effect than the birth of a son in revoking a will. Where the will purports to deal with property, over which the adopting father ceased to have a power of disposition on the birth or adoption of a son, it would be ineffectual to deal with the property⁵ except where assent to the provisions of the will was a condition of the adoption.⁶

Effect would apparently be given to an arrangement made at the time of the adoption stipulating that the adoptive father should not exercise his powers of disposition or undertaking to settle property on the boy. Such arrangement would be enforced at the instance of the adopted son.⁷ Arrangement restraining disposition.

In cases governed by the Mitakshara law, the adoptive father has no power to destroy the adopted son's right of survivorship in coparcenary property.⁸ Coparcenary property.

I. A. 83; 22 Mad. 383; 3 C. W. N. 415; *Sartaj Kuari (Rani) v. Deoraj Kuari (Rani)* (1888), 15 I. A. 51; 10 All. 272.

¹ See *Bepin Behari Bundopadhyay v. Brojonath Mookhopadhyay* (1882), 8 Cal. 357; *Radhamonec Debea v. Jadubharain Roy*, Ben. S. D. A. of 1855, p. 139; *Prosunnomoyee (Ranee) v. Ramsoonder Sein*, Ben. S. D. A. of 1859, p. 162.

² See *Ganapati Ayyan v. Savithri Ammal* (1897), 21 Mad. 10; *ante*, p. 111.

³ Act XXI. of 1870, s. 2, read with Act X. of 1865, s. 57.

⁴ See *Juteeah of pundits in Nagalutchmee Unmal v. Gopoo Nadaraja Chetty* (1856), 6 M. I. A. 309, at p. 320, referred to by Couch, C.J., in *Vinayak Narayan Jog v. Govindrav Chintaman Jog* (1869), 6 Bom. H. C. A. C. 224, at p. 230.

⁵ As the will must be taken to speak from the death of the testator, at which time he would have no

disposing power.

⁶ See *Vinayak Narayan Jog v. Govindrav Chintaman Jog* (1869), 6 Bom. H. C. A. C. 224.

⁷ See *Surendrakshav Roy v. Dooragasundari Dussee* (1892), 19 I. A. 108, at p. 132; 19 Cal. 513, at p. 536; *Bhala Nahana v. Parbhu Hari* (1877), 2 Bom. 67.

⁸ *Ganapati Ayyan v. Savithri Ammal* (1897), 21 Mad. 10, at pp. 14, 15; *Rathnam v. Sirasubramania* (1892), 16 Mad. 353; *Vitta Batten v. Yamenamma* (1874), 8 Mad. H. C. 6. See Hindu Wills Act (XXI. of 1870), s. 3; Probate and Administration Act (V. of 1881), s. 4; *Lakshman Dada Naik v. Ramchandra Dada Naik* (1880), 7 I. A. 181; 5 Bom. 48; 7 C. L. R. 320; *Chatturbhooj Meghji v. Dharamsi Naranji* (1884), 9 Bom. 438; *Lakshmi Shankar v. Vajrath* (1881), 6 Bom. 24; *Adjoothia Gir v. Kashee Gir* (1872), 4 N. W. P. H. C. 31; *Buldeo Singh (Rajah) v. Koonwer Mahabeer Singh* (1866), 1 Agra, H.

Arrangement
limiting
interest in
ancestral
property.

When, after attaining the age of majority, an adopted son ratifies an arrangement made between his natural father and the person adopting him limiting the interest in coparcenary property which he would acquire by adoption, he is bound by the arrangement.¹ It is unsettled whether, in the absence of such ratification, he can be bound by such arrangement, but it is submitted that if the arrangement be a fair one, and does not unduly interfere with the rights of the adopted son, effect will be given to it, at any rate when the arrangement is made with the adoptive father or is authorized by him.

The Madras High Court has upheld dispositions of ancestral property by the adopting father with the consent of the natural father for the purpose of providing for the maintenance of the wife of the adopting father.²

In another case³ the Bombay High Court held that when the adopted son and the person who gave him in adoption were fully cognizant of the disposition of the property made by the testator, and with the knowledge of such disposition the natural father consented to the adoption taking place, and when the disposition and the adoption might, under the circumstances, be regarded as one transaction, the disposition, though contained in a will, could not be repudiated by the adopted son. "The principle underlying the decision is that the disposition was one which it was competent to the testator to make prior to the adoption, and that its acceptance being presumably a condition subject to which the adoption was made, it made no difference that the disposition was testamentary."⁴

The same Court upheld an arrangement between the natural father and the adopting mother, where provision was made for the enjoyment of a portion of the property by the mother in the case of her disagreement with the adopted son,⁵ but in another case⁶ refused to uphold an arrangement whereby the mother could dispose of immovable property.

In *Ramaswami Aiyar v. Vencataramaiyan*,⁷ the Judicial Committee said, "How far the natural father can by agreement before the adoption renounce all or part of his son's rights, is a question not altogether unattended with difficulty; although the case of *Chitko Raghunath Rajadiksh*

C. 155; *Narottam Jagjiwan v. Narandas Harikisundas* (1866), 3 Bom. H. C. (A. C. J.) 6; *Gangubai v. Ramanna* (1866), 3 Bom. H. C. (A. C. J.) 66.

¹ See *Ramaswami Aiyar v. Vencataramaiyan* (1879), 6 I. A. 196; 2 Mad. 91.

² *Lakshmi v. Subramanya* (1889), 12 Mad. 490; *Narayanasami v. Ramasami* (1890), 14 Mad. 172. See *Basava v. Linganganda* (1894), 19 Bom. 428.

³ *Vinayak Narayan Jog v. Govin-*

drav Chintaman Jog (1869), 6 Bom. H. C. A. C. 224.

⁴ *Lakshmi v. Subramanya* (1889), 12 Mad. 490, at pp. 492, 493. See *Ganapati Ayyan v. Savithri Ammal* (1897), 21 Mad. 10.

⁵ *Visalakshi Ammal v. Sivaramien* (1904), 27 Mad. 577.

⁶ *Venkappa v. Fakirgouda* (1906), 8 Bom. L. R. 346.

⁷ (1879), 6 I. A. 196, at p. 208; 2 Mad. 91, at p. 101. See *Lakshmanu Rau v. Lakshmi Ammal* (1881), 4 Mad. 160, at p. 163.

v. *Janaki*¹ certainly decides that an agreement on the part of the father that his son's interest shall be postponed to the life interest of the widow is valid and binding." In *Bhaiya Rabidat Singh v. Indar Kunwar (Maharani)*² the Judicial Committee said, "It is difficult to understand how a declaration by Guman Singh (the natural father) on an agreement by him, if it was an agreement, could prejudice or affect the rights of his son, which would only arise when his parental control and authority determined."

It is submitted that the determination of this question depends upon the nature of the particular arrangement. It is scarcely necessary to speculate as to what would happen if the natural father assented to a disposition of the whole of the ancestral property away from the son, as such a case is not likely to occur. If such case did occur, the Courts would probably hold that the natural father acted in excess of his powers, and that his son was not bound by it, but in dealing with a less extreme case, effect might well be given to a fair arrangement, in which the son distinctly benefits by the adoption. Where the adoptive father is separate from his kinsmen, and has, therefore, a power of disposing by will even of ancestral property, if he has no son, it must be remembered that he is by any such arrangement only doing what it was competent for him to do in the absence of an adoption.

As to a condition contained in the permission to adopt, see *ante*, pp. 111, 112.

There is authority that where there is an express power of adoption given by the husband, the widow cannot originate conditions. If she does so, the adoption would be valid, and the conditions would be ineffectual.³

Effect would be given to an arrangement which had been ratified by the boy after attaining majority.⁴

In Bombay it has been held that a widow can, at the time of the adoption, make a fair arrangement for the protection of her interest in the estate during her lifetime.⁵ The cases in which this conclusion has been arrived at were not cases in which express power was given by the husband, but cases where the widow exercised the power given to her by the system of Hindu law prevalent in Western India.⁶

When a widow obtains a reservation of rights by such an arrangement, she possesses therein only the ordinary rights of a Hindu widow.⁷

¹ (1874), 11 Bom. H. C. 199.

² (1888), 16 I. A. 53, at p. 59; 16 Cal. 556, at p. 564.

³ *Jagannadha v. Papamma* (1892), 16 Mad. 400. In *Solukhna (Mussumant) v. Ramdhol Pande* (1811), 1 Ben. Sel. R. 324 (new edition, 434), the pundits considered that an instrument under which the widow remained in possession was inoperative. G. C. Sircar ("Law of Adoption," p. 408) considers that the widow can make conditions.

⁴ See *Kali Das v. Bijai Shankar* (1891), 13 All. 391.

⁵ *Ravji Vinaykrar Jagannath Shankarsett v. Lakshmabai* (1887), 11 Bom. 381, at pp. 401, 402; *Radhabai v. Ganesh Tatya Gholap* (1878), 3 Bom. 7, at p. 8; *Chitko Raghunath Rajadiksh v. Janaki* (1874), 11 Bom. H. C. 199.

⁶ *Ante*, pp. 119, 120.

⁷ *Antaji v. Duttaji* (1893), 19 Bom. 36.

A widow would apparently have no power to arrange with the natural father to obtain for herself an interest in property which had not been vested in her, as, for instance, in property which, on her husband's death, passed by survivorship to other members of the family, and which is divested by the adoption.¹

Son born after adoption.

Where, after an adoption,² a son is born to the adoptive father, the adopted son loses all rights to the performance of religious ceremonies, and his rights of inheritance are reduced—

(a) If he be governed by the Bengal school, to one-half of the share of a natural-born son.³

(b) If he be governed by the Benares school, to one-third of the share of a natural-born son.⁴

The "Dattaka Mimansa" (Sec. 5, par. 40) gives the adopted son a fourth share.

(c) If he be governed by the schools prevailing in Southern India⁵ and Bombay,⁶ to one-fourth of the share of a natural-born son.

Sudras.

It is not settled whether this rule applies to *Sudras*, or whether in the case of *Sudras* natural-born and adopted sons take equally.

The Madras High Court has held⁷ that among *Sudras* the adopted son

¹ *Post*, p. 192.

² Where the son is born before the adoption then the adoption is invalid, *ante*, p. 99.

³ "Dayabhaga," x. 9; "Dattaka Chandrika," v. 16-17; Sir F. Macnaghten's "Considerations on Hindu Law," 137; 1 W. Macn. 70; 2 W. Macn. 184; Sircar's "Law of Adoption," p. 398. Consequently, if there be one begotten son the adopted son takes one-third of the whole, if there be two he takes one-fifth, and so on.

⁴ Sir F. Macnaghten's "Considerations on Hindu Law," 137; 1 W. Macn. 70; 2 W. Macn. 184; "Mitakshara," i. 11, 24, 25; "Dattaka Mimansa," x. 1; v. 40. See, however, *Raghubanund Doss v. Sadhu Churn Doss* (1878), 4 Cal. 425; 3 C. L. R. 534, which was governed by the Mitakshara law and apparently by the Benares school. The Court there

considered that an adopted son takes half the share of a natural-born son.

⁵ *Ayyavu Muppanar v. Niladatchi Ammal* (1862), 1 Mad. H. C. 45.

⁶ *Giriapa v. Ningapa* (1892), 17 Bom. 100. In the earlier cases the Bombay High Court considered that the share was one-third of the share of a natural-born son. *Hanmant Ramchandra v. Bhimacharya* (1887), 12 Bom. 105; *Rukhab v. Chunilal Ambushet* (1891), 16 Bom. 347. In *Giriapa v. Ningapa* the Court did not refer to these earlier decisions. See "Vyavahara Mayukha," p. 60, Mandlik's edition. As to *Garbhari Gosavis*, see *Balgir v. Dhondgir* (1903), 5 Bom. L. R. 114.

⁷ *Raja v. Subbaraya* (1883), 7 Mad. 253, at p. 254. See also W. Macnaghten's "Hindu Law," vol. i. p. 99, note; Strange's "Hindu Law," p. 99.

is entitled to take an equal share with a legitimate son, who is born subsequently to the adoption. The "Dattaka Chandrika"¹ is to the same effect, and the same view is said to have been taken by the Calcutta High Court.² Baboo Shamachurn Sircar holds that this does not apply to what he calls "the good *Sudras* of this country."³ This distinction is based upon a text of Vriddha Goutama, which says, "A given son abounding in good qualities existing, should a legitimate son be born at any time: let both be equal sharers of the father's whole estate."⁴ It is submitted that where there is no special custom, the above rule applies to all classes of *Sudras* alike.⁵

In a case of partition of joint family property governed by the Mitakshara law, the adopted son and the after-born son would apparently share in similar proportions. Succession by survivorship.

It is not settled whether, in sharing an inheritance with a natural relation of the same degree other than a legitimate son, an adopted son is entitled to a less share than that of a legitimate son. Competition between adopted son and relations other than son.

It is submitted that, at any rate, on a partition of joint family property in a case governed by the Mitakshara law, there is no reason why he should in such case receive a less share than he would have received if he had been a legitimate son.

It has been held in *Tara Mohun Bhattacharjee v. Kripa Moyee Debia*,⁶ by a Bench of the Bengal High Court, that "when an adopted son comes to share with heirs other than the legitimately begotten sons of his adoptive father in the property of kinsmen, he takes the same share that they would have," and in *Surjokant Nandi v. Mohesh Chunder Dutt*,⁷ it was held by the same Court that the adopted son of one daughter shares equally with the natural son of another daughter in the inheritance left by his maternal

¹ S. 5, paras. 29-32.

² *Bramanund Mahanty v. Chowdhry Krishna Churn Patuak* (1882), unreported case referred to in G. C. Sircar's "Law of Adoption," p. 403. The rule was apparently unknown to Sir F. Macnaghten, who, in dealing with a case of *Sudras* (*Gopee Mohun Deb v. Raja Rajkrishna*, "Considerations on Hindu Law," 233), expressed the opinion that the adopted son was entitled to one-third of the estate. In *Rughuband Doss v. Sadhu Churn Doss* (1878), 4 Cal. 25; 3 C. L. R. 534 (*ante*, p. 180, note 4) the parties were *Sudras*.

³ "Vyavastha Darpana," pp. 913-915. This is a digest of the Hindu law current in Bengal.

⁴ In his "Vyavastha Chandrika" (a digest of Hindu law current in all the Provinces of India, except Bengal proper), vol. i. p. 169, Baboo Shama Churn Sircar says as to this text, "The above rule, however, is now quite inapplicable, adopted sons possessed of good qualities, such as are required by the law, being rare at the present (Kah) age."

⁵ See Sircar's "Law of Adoption," pp. 402, 403.

⁶ (1868), 9 W. R. C. R. 423, at p. 425. This decision was in G. C. Sircar's opinion ("Law of Adoption," p. 400) based on an omission from, and a mistranslation of the "Dattaka Chandrika," by Mr. Sutherland.

⁷ (1882), 9 Cal. 70.

grandfather, but it does not appear from the report whether this question was discussed in that case. In *Raghubanund Das v. Sadhu Churn Das*,¹ it was held by the same Court in a case governed by the "Mitakshara" that in a partition between an adopted son and the natural-born sons of the brothers of his adoptive father the adopted son can only take half the share which he would have taken if he had been a legitimate son. This decision was based upon a paragraph² of the "Dattaka Chandrika,"³ which has no reference to the peculiar incidents of a Mitakshara joint family.⁴ It has been doubted by the High Court of Madras.⁵ Mr. Mayne⁶ also gives reasons for doubting its authority. Sastri G. C. Sircar⁷ says, "There cannot be any doubt that according to the 'Dattaka Chandrika,' when a relation by adoption is entitled to inherit together with a real relation of the same degree, either lineally or collaterally, the former must take half as much as is taken by the latter; as, in fact, the rule which has been laid down with respect to the distribution of the adopter's estate between an adopted and a real son, is to be applied to all cases. Accordingly it was held, upon the opinion of a Pundit in a case in which succession opened to the nephews, that a nephew by adoption was entitled to half of what was to be allotted to each of the real nephews."⁸ He, however, points out the error of the Calcutta High Court in applying this rule in the case of *Raghubanund Das v. Sadhu Churn Das*,⁹ as in that case the adopted son was entitled to the whole share which his father would have been entitled to, if a partition had been effected in his lifetime.¹⁰

The birth of a legitimate son would not apparently affect the incapacity of the adopted son to marry in, or adopt from, his adoptive family.

The Jain law in this matter coincides with the ordinary Hindu law.¹¹

In the case of impartible property the afterborn son succeeds to the exclusion of the adopted son.¹²

Jains.

Impartible
property

¹ (1878), 4 Cal. 425; 3 C. L. R. 534.

² 24. "Therefore by the same relationship of brother and so forth, in virtue of which the real legitimate son would succeed to the estate of a brother or other kinsman, *the adopted son of the same description obtains his due share. And in the event of the ancestor having other sons, a grandson by adoption whose father is dead obtains the share of an adopted son.* Where such son may not exist, the adopted son takes the whole estate even." The words in italics are omitted in Mr. Sutherland's translation. See *Raghubanund Dass v. Sadhu Churn Dass* (1878), 4 Cal. 425, at pp. 428, 429; 3 C. L. R. 534, at p. 538.

³ The "Dattaka Chandrika" is an authority pre-eminent in the Bengal school. See *Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868),

12 M. I. A. 397, at p. 437; 1 B. L. R. (P. C.) 1, at p. 13; 10 W. R. (P. C.) 17, at p. 22, and *ante*, p. 12.

⁴ Sircar's "Law of Adoption," p. 402.

⁵ *Raju v. Subbaraya* (1883), 7 Mad. 253.

⁶ "Hindu Law," 7th ed., pp. 224-228.

⁷ "Law of Adoption," pp. 400, 401.

⁸ W. Macnaghten, "Hindu Law," vol. ii. p. 69.

⁹ (1878), 4 Cal. 425; 3 C. L. R. 534.

¹⁰ At pp. 401, 402.

¹¹ *Rukhab v. Chunilal Ambushet* (1891), 16 Bom. 347.

¹² *Ramasami Kamaya Naik v. Sundaralingasami Kamaya Naik* (1894), 17 Mad. 422, at p. 435. S. C. affirmed on appeal, *Sundaralingasami Kamaya Naik v. Ramasami Kamaya Naik* (1899), 26 I. A. 55; 22 Mad. 515; Bom. L. R. 850.

An adopted son can renounce his interest in property which becomes vested in him by virtue of his adoption, or may waive any of his rights therein.¹ Renunciation or waiver of rights.

On such renunciation the person who would take in default of adoption would succeed to the property.²

There is nothing to prevent an adopted son making over his rights in the property, or in a portion thereof, to his adoptive mother or to any one else after he has attained majority.³

Except when he has been adopted as a *dryamushyayana*,⁴ an adopted son loses by his adoption all rights as the son of his natural father and mother.⁵ Exclusion from rights in natural family.

He cannot inherit to the members of his natural family,⁶ except he has such right as the son of his adoptive father,⁷ and they cannot inherit to him.⁸

It may happen that he loses the right to succeed to his natural mother and her relatives, and does not acquire a new mother, or maternal relatives for spiritual or temporal purposes, as where the adoption is by a bachelor, or a widower,⁹ or perhaps where the adoption is made in spite of the express dissent of the wife of the adoptive father.¹⁰

An adopted son on adoption ceases to be liable for the debts¹¹ or other obligations for which he would have been liable as a member of his natural family.

In parts of the Punjab the rights of the adopted son in his natural family take effect if his natural father dies without leaving legitimate sons.¹²

¹ W. Macnaghten's "Hindu Law," vol. ii. pp. 183, 184. He cannot renounce his status as an adopted son, *ante*, p. 151.

² *Mahadu Ganu v. Bayaji* (1893), 19 Bom. 239; *Ruvree Bhadr v. Roopshunker Shunkerjee* (1829), 2 Borr. 656, at pp. 665, 671.

³ *Tara Muneo Dibia (Mussummaul) v. Dev Narayun Rai* (1824), 3 Ben. Sel. R. 387 (2nd ed., 516); 2 Macn., pp. 183, 184. See *Bhugobutty Dayee (Mussamul) v. Chowdhry Bholanath Thakoor* (1871), 15 W. R. (C. R.) 63; *Mahadu Ganu v. Bayaji* (1893), 19 Bom. 239.

⁴ *Post*, pp. 184, 185.

⁵ "Manu," chap. ix. para. 142; "Dattaka Mimansa," s. 6, paras. 6-8; "Dattaka Chandrika," s. 2, paras. 18-20; "Mitakshara," chap. i. s. 11, para. 32; "V. Mayukha," chap. iv. s. 5, para. 21.

⁶ W. Macnaghten's "Hindu Law," vol. i. p. 69.

⁷ For an instance of this, see *Annammah v. Mabbu Bali Reddy* (1875), 8 Mad. H. (C.) 108, where the natural father took as heir to the son whom he had given in adoption.

⁸ *Duttanarain Sing v. Ajeet Sing* (1799), 1 Ben. Sel. R. (new edition, 26); *Muthayya Rajagopala Thevar v. Minakshi Sundara Nachiar* (1901), 25 Mad. 394; *Srinivasa Ayyangar v. Kuppan Ayyangar* (1863), 1 Mad. H. (C.) 180; *Gunga Persad Roy v. Brijessuree Chowdhraia*, Ben. S. D. A. 1859, p. 1091.

⁹ *Ante*, p. 102.

¹⁰ *Ante*, pp. 107, 175.

¹¹ *Pranvullubh v. Deokristin* (1824), Bom. Sel. R. 4; *Kasheerpershad v. Bunscedhur*, 4 N. W. P. (S. D.) 343.

¹² "Punjab Customary Law," iii. p. 83; "Punjab Cust.," 81.

Property
vested before
adoption.

Adoption does not divest any property which has vested in the adopted son by inheritance, gift, or any form of self-acquisition previous to the adoption.¹

He would lose such rights as he might have had in ancestral property as a member of a joint family governed by the Mitakshara school of law.² When the property had been partitioned and a share had vested in him by virtue of the partition, he would retain his rights in it in spite of the adoption, and where the family property had vested in him as the only surviving member of a joint family, it would not be divested by his adoption.³

When a married Hindu, having a son is taken in adoption, the son does not, like his father, lose the *gotra* and rights of inheritance in the family of his birth.⁴

Dryamushyayana.

A boy can be adopted, so as to retain his relationship to his natural father, while acquiring the relationship of a son to his adoptive father. He is then said to be *Dryamushyayana*⁵ (or son of two fathers).

A boy adopted in Mithila by the *Kritrima* form of adoption is also treated as the son of two fathers.⁶

Nitya dryamushyayana.

Where there is an understanding, or a previous stipulation between the giver and the receiver in adoption, that the boy should belong to both of them, the boy is said to be *nitya dryamushyayana*⁷ (i.e. perpetual or absolute son of two fathers).

¹ *Behari Lal Lahav. Kailas Chunder Lahu* (1896), 1 C. W. N. 121. As, for instance, where he has acquired property by the will of a natural relation, or by succession to a maternal grandfather, or it may be even by inheritance from his natural father, as was the case in *Papamma v. V. Appa Rao* (1893), 16 Mad. 384, although the question as to whether it was divested did not arise in that case.

² *Ante*, p. 173.

³ *Venkata Narasimha Appa Row (Sri Rajah) v. Rangayya Appa Row (Sri Rajah)* (1905), 29 Mad. 437.

⁴ *Kalgavda Tavanappa v. Somappa Tamungavda* (1909), 33 Bom. 669; 11 Bom. L. R. 797.

⁵ Literally two persons. See Sutherland's "Synopsis," head fifth. The practice of adopting a son as *dryamushyayana* seems to have origi-

nated from the obsolete practice of *nityoga*. The *dryamushyayana* son, treated of in the "Mitakshara," chap. i. s. 10, is the son begotten in accordance with that practice.

⁶ *Ante*, pp. 151, 152.

⁷ See *Uma Devi (Srimati) v. Gokoolanand Das Mahapatra* (1878), 5 I. A. 40, at pp. 50, 51; 3 Cal. 587, at p. 598; 2 C. L. R. 51, at p. 58. Opinions of pundits in *Haimun Chull Sing (Raja) v. Gumsheam Sing (Koorer)* (1834), 2 Knapp, 203, at pp. 206-288; *Joymoney Dossee (Sreemutty) v. Sibosondry Dossee (Sreemutty)* (1837), Fulton, 75; *Shumshere Mull (Raja) v. Dilraj Konwar* (1816), 2 Ben. Sel. R. 189 (2nd ed., 216); 2 W. Macn. 192, 193; Strange's "Hindu Law," vol. i. p. 86; W. Macnaghten's "Hindu Law," vol. ii. 192; "Dattaka Mimamsa," s. 6, para. 48; "Dattaka Chandrika," s. 2, para. 24.

This arrangement can be made by a widow taking in adoption.¹

Adoption of
only son.

The authorities show that where an only son has been adopted by a united brother of his father it is presumed that there was an arrangement that he was to be *dvayamushyayana*.² It does not seem to be very clear whether this rule applies only to the adoption of an only son of a brother, or whether it is applicable to all only sons.³ It applies to adoption by widows of brothers.⁴

As it has now been held that an only son can be adopted in the *Dattaka* form,⁵ the only advantage in adopting a boy as a *dvayamushyayana*, is that the boy is not removed entirely from his natural family; but a boy so adopted could not secure the salvation of the person adopting as effectually as a *Dattaka* son.⁶ The adoption of a boy as a *dvayamushyayana* under these circumstances seems to have arisen from a desire to reconcile the prohibition against the adoption of an only son with the recommendation to adopt the son of a brother. There is no necessity to evade a prohibition which has now been held to have no legal force.

In some parts of India a *nitya dvayamushyayana* seems to be quite obsolete.⁷ It is obsolete on the east coast, but is said to be the ordinary

¹ *Krishna v. Paramshri* (1901), 25 Bom. 537; 3 Bom. L. R. 73.

² *Basava v. Lingangauda* (1894), 19 Bom. 428, at p. 454; *Uma Deyi (Srimati) v. Gokoolanund Das Mahapatra* (1878), 5 I. A. 40, at pp. 50, 51; 3 Calc. 587, at p. 598; 2 C. L. R. 51, at p. 58. See opinions of pundits in *Haimun Chull Sing (Raja) v. Gunsham Sing (Koomer)* (1834), 2 Knapp, 203, at pp. 206-208; *Nilmadhuh Doss v. Bishumber Doss* (1869), 13 M. I. A. 85, at pp. 100, 101; 3 B. L. R. P. C. 27, at p. 32; 12 W. R. P. C. 29, at p. 31.

³ Mr. Mayne, in his "Hindu Law" (7th ed., pp. 185, 229, 230), applies this rule only to the son of a brother. See also *Gokoolanund Dass v. Wooma Dace* (1875), 15 B. L. R. 405, at pp. 415, 416; 23 W. R. C. R. 340, at p. 341; S. C. on appeal, *Uma Deyi (Srimati) v. Gokoolanund Das Mahapatra* (1878), 5 I. A. 40, at pp. 50, 51; 3 Calc. 587, at p. 598; 2 C. L. R. 51, at p. 58. Sastri G. C. Sircar ("Law of Adoption," p. 377), says, "It may no doubt be contended from what Nanda Pandita says in one passage that the gift of an only son is limited to the case of brothers. But in the very next passage ('Dattaka Mimansa,' ii. 39) he explains the principle of the adoption of an only son, which is

applicable to all cases. And this general position is supported by what is said in the 'Mitakshara' with respect to the analogous case of a son produced by a man other than the brother on another man's wife. The 'Dattaka Chandrika,' however, does not appear to limit the *dvayamushyayana* adoption of an only son to the case of adoption by a paternal uncle only, but intimates it to be applicable to all cases" ("Dattaka Chandrika," ii. 28; iii. 17; v. 33). See also *Krishna v. Paramshri* (1901), 25 Bom. 537, at p. 542; 3 Bom. L. R. 73.

⁴ See *Krishna v. Paramshri* (1901), 25 Bom. 537; 3 Bom. L. R. 73. It was not in that case necessary to raise any presumption, as the adoption was proved to have been in the *dvayamushyayana* form.

⁵ *Ante*, p. 140.

⁶ *Uma Deyi (Srimati) v. Gokoolanund Das Mahapatra* (1878), 5 I. A. 40, at p. 51; 3 Calc. 587, at p. 598; 2 C. L. R. 51, at p. 58; *Basava v. Lingangauda* (1894), 19 Bom. 428, at pp. 454, 456; *Chenava v. Basangauda* (1895), 21 Bom. 105, at pp. 810, 109.

⁷ Strange's "Manual," 2nd ed., para. 94; V. N. Mandlik, p. 506; Mad. Dec. of 1859, p. 81; *Basava v. Lingangauda* (1894), 19 Bom. 428, at pp. 454, 455.

form of adoption recognized in Malabar and amongst the Nambudri Brahmins.¹ The practice has been held by the Bombay High Court to exist among Lingayets, whether the brothers are divided or joint.²

It is said to be not at all unusual in the southern districts of the Bombay Presidency,³ and it has been recognized by the Judicial Committee in two cases from Bengal,⁴ and by the Allahabad High Court in a case from Bareilly.⁵

Anitya dvyamushyayana.

When from a different *gotra* (family) a boy was adopted after he has been initiated into the ceremony of tonsure in the *gotra* of his natural father, and was invested with the sacred thread in the *gotra* of his adoptive father, as the rites of initiation have been performed by both fathers, he was termed *anitya dvyamushyayana*⁶ (i.e. temporary son of two fathers). The *anitya dvyamushyayana* is unknown to modern Hindu law.⁷

The forms and conditions of *dvyamushyayana* adoption are the same as in other cases, where the adoption is in the *Dattaka* form.⁸ The boy adopted inherits both in the family in which he was born and in the family of his adopter.⁹

Inheritance in case of dvyamushyayana.

The issue of the *anitya dvyamushyayana* seem to have reverted to their father's natural family.¹⁰ As in the case of a *nitya dvyamushyayana* the adoption is complete, it is submitted that the issue inherit in the adoptive family, and in that family only.¹¹

Failing near heirs, the natural mother¹² and other natural relations will inherit to a man adopted in this form.

¹ *Vasudevan v. Secretary of State* (1887), 11 Mad 157, at pp. 167, 179.

² *Chenava v. Basangarda* (1895), 21 Bom. 105.

³ Steele's "Law and Custom," 45, 47, 183, 384; *Basava v. Lingangauda* (1894), 19 Bom. 428, at pp. 466, 467; *Krishna v. Paramshri* (1901), 25 Bom. 537, at p. 543; 3 Bom. L. R. 73.

⁴ *Nilmadhub Doss v. Bishumber Doss* (1869), 13 M. I. A. 85, at pp. 100, 101; 12 W. R. P. C. 29, at p. 31; *Uma Deyi (Srimati) v. Gokoolanund Das Mahapatra* (1878), 5 I. A. 40, at pp. 50, 51; 3 Calc. 587, at p. 598; 2 C. L. R. 51, at p. 58.

⁵ *Behari Lal v. Shib Lal* (1904), 26 All. 472.

⁶ See *Shumshere Mull (Raja) v. Dilraj Konwur (Ranee)* (1816), 2 Ben. Sel. R. 189; 2nd ed., 216, at p. 221.

⁷ See Mayne's "Hindu Law," 7th ed., pp. 229, 230.

⁸ *Krishna v. Paramshri* (1901), 25 Bom. 537, at p. 542; 3 Bom. L. R. 73. See Sircar's "Law of Adoption," p. 376.

⁹ See "Vyavahara Mayukha," chap. iv. s. 5, para. 25.

¹⁰ W. Macnaghten's "Hindu Law," vol. i. p. 71, referred to in *Uma Deyi (Srimati) v. Gokoolanund Das Mahapatra* (1878), 5 I. A. 40, at p. 51; 3 Calc. 587, at p. 598; 2 C. L. R. 51, at p. 58. See "Dattaka Mimansa," s. 6, paras. 41-44; Strange's "Hindu Law," vol. ii. pp. 122, 123.

¹¹ See Sutherland's "Synopsis of Law of Adoption," head v.; R. Sarvadhikari's "Law of Inheritance," p. 533. Sastri G. C. Sircar says ("Law of Adoption," p. 376) that the descendants continue to belong to both the *gotras* or families.

¹² See *Behari Lal v. Shib Lal* (1904), 26 All. 472.

If a son is born to the natural father, the *dvyamushyayana* ^{After-born son.} son takes half of what the after-born son takes. If a son is born to his adoptive father, he takes half of an adopted son's share.¹

The "Mayukha" says,² "If both have legitimate sons, he offers an oblation to neither, but takes a quarter of the share allotted to a legitimate son of his adoptive father."

Adoption by a widow vests in the adopted son (as the heir ^{Vesting and divesting of estate.} of her husband) the estate vested in her as widow,³ or as mother of a deceased son,⁴ or vested in her co-widow,⁵ as widow,⁶ subject to a right of maintenance;⁷ but, with these exceptions, it does not divest any estate of inheritance which has been taken by a person, as heir of a male holder other than the person to whom the adoption was made.⁸

¹ G. C. Sircar's "Law of Adoption," p. 403; "Dattaka Chandrika," s. 5, paras. 33, 34. As to what is such share, see *Ante*, p. 180.

² IV. 5, para. 35. See Mayne's "Hindu Law," 7th ed., p. 230.

³ See *Mondakini Dasi v. Adinath Dey* (1890), 18 Calc. 69; *Bamundoss Mookerjee v. Tarinee (Mussamut)* (1858), 7 M. l. A. 169, at p. 185; *Lakshmana Rau v. Lakshmi Anunal* (1881), 4 Mad. 160, at p. 164; *Sreenanulu v. Kristamma* (1902), 26 Mad. 143, at p. 152; *Collector of Bareilly v. Nuraen Day (Musst.)* (1868), 3 Agra, 349. It does not affect her *Stridhan* property.

⁴ *Jatindra Nath Chaudhuri (Rai) v. Amrita Lal Bagchi* (1900), 5 C. W. N. 20; *Ravji Vinayakrav Jaggannath Shankarsett v. Lakshmi Bai* (1887), 11 Bom. 381, at p. 397; *Jannabai v. Raychand Nahalchand* (1883), 7 Bom. 225; *Lakshmi Chand v. Gatto Bai* (1886), 8 All. 319. See *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1, at p. 9; 1 Mad. 174, at p. 186; 26 W. R. C. R. 21, at p. 23; *Ramasawmi Aiyar v. Venkataramaiah* (1879), 6 I. A. 196, at p. 208; 2 Mad. 91, at p. 101; *Bykant Monce Roy v. Kisto Soonderte Roy* (1867), 7 W. R. C. R. 392. A con-

trary opinion was expressed in *Gobindo Nath Roy v. Ram Kanay Chowdhry* (1875), 24 W. R. C. R. 183, and *Puddo Kumarce Debee v. Juggut Kishore Acharjee* (1875), 5 Calc. 615, in the former of which cases the question did not directly arise, and in the latter the decision was set aside by the Judicial Committee upon another ground (*Pudma Coomari Debi v. Court of Wards* (1881), 8 I. A. 229; 8 Calc. 302). See G. C. Sircar's "Law of Adoption," p. 411.

⁵ *Mondakini Dasi v. Adinath Dey* (1890), 18 Calc. 69; *Rakshnabai v. Radhabai* (1868), 5 Bom. H. C. A. C. 118, at p. 192; *Gopal Balkrishna Kenjale v. Vishnu Raghunath Kenjale* (1898), 23 Bom. 250; *Amava v. Mahadgauda*, 22 Bom. 416; *Ramji v. Ghamau* (1879), 6 Bom. 498.

⁶ Where the estate is vested in the co-widow as heir to her son it cannot be so divested; *Faizuddin Ali Khan v. Tincowri Saha* (1895) 22 Calc. 565; *Anandibai v. Kashibai* (1904), 28 Bom. 461.

⁷ *Dhurm Das Pandey v. Shamasoodri Dibiah* (1843), 3 M. l. A. 229, at p. 243; 6 W. R. P. C. 43, at p. 45.

⁸ *Bhubaneswari Debi v. Nilkomul Lahiri* (1885), 12 I. A. 137; 12 Calc.

This proposition applies only to cases governed by the Bengal School of law, and to property which has passed by inheritance under the Mitakshara system. It has no application to coparcenary property held by the members of a joint family under the Mitakshara School, as to which. see *post*, p. 192.

Illustrations.

(i.) A, governed by the Bengal school of law, dies, leaving a son B, and a widow C, and having given to C a power to adopt a son in case of failure of male issue. B dies, leaving a widow D. C adopts E. E cannot oust D.¹

(ii.) A, the owner of an impartible zemindari, dies, leaving a son B, and a widow C. B dies unmarried. C validly adopts D. D can oust C.²

(iii.) A, a separated Hindu, governed by the Mitakshara law, dies, leaving a widow B, and a son C by another wife. C dies unmarried, and thereupon B adopts D. D cannot oust the heir of C who had succeeded on C's death.³

(iv.) A, governed by the Bengal school of law, dies, leaving a widow B, and a son C by another wife, and a mother D. C dies unmarried, and thereupon B adopts E. E cannot oust D who had succeeded on C's death.⁴

(v.) A, governed by the Bombay law, dies, leaving a widow B, and an undivided son C. C dies, leaving a widow D and a son E, who subsequently dies. On E's death, B adopts F. F cannot oust D.⁵

(vi.) A and his sons B and C were members of an undivided family, governed by the Bombay law, B died leaving a widow D, then A died. On his death, C succeeded to the family property. C died, leaving a widow E. After C's death, D, having express authority to adopt, adopted F. F cannot oust E.⁶

18; *S. C. in Court below, Nilcomul Lahuri v. Jotendro Mohun Lahuri* (1881), 7 Calc. 178; 8 C. L. R. 461; *Kally Proscanno Ghose v. Gecool Chunder Mitter* (1877), 2 Calc. 295; *Dhurm Das Pandey v. Shama Soondri Dibiak (Mussumat)* (1843), 3 M. I. A. 229; 6 W. R. P. C. 43; *Gopal Balakrishna Kenjale v. Vishnu Raghunath Kenjale* (1898), 23 Bom. 250; *Vasudeo Vishnu Manohar v. Ramchandra Vinayak Modak* (1896), 22 Bom. 551; *Dhornidhar (Shri) v. Chinto* (1895), 20 Bom. 250; *Guedappa v. Girimalappa* (1894), 19 Bom. 331; *Chandra v. Gojarabai* (1890), 14 Bom. 463; *Annammah v. Mabbu Bali Reddy* (1875), 8 Mad. H. C. 108; *Rupchand Hindumal v. Rakhmabai* (1871), 8 Bom. H. C. A. C. 114; estate of grandmother, *Drobomoyee Chowdhraïn v. Shama Churn Chowdhry* (1885), 12 Calc. 246; estate of mother, *Anandi-*

bai v. Kashibai (1904), 28 Bom. 461; 6 Bom. L. R. 464; estate of daughter, *Lakshmbai v. Vishnu Vasuder Bele* (1905), 29 Bom. 410; 7 Bom. L. R. 436, and cases below, notes 1-6, and *post*, p. 189, notes 1-5.

¹ *Bhoobun Moyee Debia (Mussumat) v. Ram Kishore Acharj Chowdhry* (1865), 10 M. I. A. 279; 3 W. R. P. C. 15.

² *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Naisayya* (1876), 4 I. A. 1; 1 Mad. 171.

³ *Annammah v. Mabbu Bali Reddy* (1875), 8 Mad. H. C. 108.

⁴ *Drobomoyee Chowdhruïn v. Shama Churn Chowdhry* (1885), 12 Calc. 246.

⁵ *Keshav Ramkrishna v. Govind Ganesk* (1884), 9 Bom. 94.

⁶ *Chandra v. Gojarabai* (1890), 14 Bom. 463. If D had adopted before C's death F would have been entitled

(vii.) A dies, leaving three widows and B the wife of a son who had predeceased him. B adopts C. C cannot oust the widows.¹

(viii.) A and B were undivided brothers, governed by the Mitakshara school. A dies, leaving a widow C. B dies, leaving a widow D. C adopts E. E cannot oust D.²

(ix.) A, governed by the Bengal school, dies, leaving a widow B, and a daughter C, and a brother's son D. C dies, then D dies, having given to his widow E a power of adoption. Then B dies. Afterwards E adopts F. F has no right to the property.³

(x.) A, governed by the Mitakshara, dies, leaving two widows B and C, and a son D by B. He authorized C to adopt a son in the event of D dying unmarried. D died unmarried. C adopted a son E, to which adoption B was not a party. E cannot oust B who succeeded as heir to her son.⁴

(xi.) A, governed by the Bengal school, dies, leaving a widow B and two brothers C and D. C dies, leaving a son E. D dies, leaving a widow F, and having given her a power of adoption. After B's death, F adopts G. G cannot compel E to give him half the property.⁵

In *Kalidas Das v. Krishan Chandra Das*,⁶ Peacock, C.J., said, "There is no case in which an estate vested by inheritance can be divested by the adoption of a son by a widow after her husband's death."

Although the judgment proceeded on the circumstance that the person in whom the estate was vested had assented to the adoption, it is said in *Babu Anaji v. Ratnoji Krishnarao*,⁷ "For the purposes of inheritance the adoption may be considered as relating back to the death of the adoptive father divesting all estates which have during the intermediate period become vested, as it were, conditionally in another." This is, it is submitted, put too broadly. In the same case⁸ the Court, in referring to *Sri Raghunada v. Sri Brozo Kishoro*,⁹ says that "the person whose

to share with C, *idem*, at p. 466, on the authority of *Raghunada (Sri) v. Brozo Kishoro (Sri)* (1876), 3 I. A. 153; 1 Mad. 69; 25 W. R. C. R. 291.

¹ *Dharmidhar (Shri) v. Chinto* (1895), 20 Bom. 250.

² *Adini Suryaprasada Rao v. Nidamarty Gangaraju* (1909), 33 Mad. 229. See *Rupchand Hindumal v. Rakhmabai* (1871), 8 Bom. H. C. A. C. 114.

³ *Kallyprosonno Ghose v. Gocool Chunder Mitter* (1877), 2 Calc. 295. If the adoption had taken place during the lifetime of B, F would have succeeded, but on B's death the property must have vested in the then heir of A.

⁴ *Faizuddin Ali Khan v. Tincoorri Saha* (1895), 22 Calc. 565.

⁵ If the adoption had taken place in the lifetime of C then G would have been entitled to share with E. *Bhubaneswari Debi v. Nilkomul Lahiri* (1885), 12 I. A. 137; 12 Calc. 18. S. C. in Court below, *Nilkomul Lahiri v. Jotrendo Mohun Lahiri* (1881), 7 Calc. 178; 8 C. L. R. 401.

⁶ (1869), 2 B. L. R. (F. B.) 103, at p. 111; 11 W. R. (A. O. J.) 11, at p. 13.

⁷ (1895), 21 Bom. 319, at p. 325.

⁸ At p. 324.

⁹ (1876), 2 I. A. 154; 1 Mad. 69; 25 W. R. C. R. 291.

estate was there divested was a male full owner," but in the case cited the parties were members of a joint undivided family, governed by the Mitakshara law, and the person whose estate was divested had not obtained it by inheritance, but by survivorship.¹

In *Surendra Nandan Das v. Sailaja Kant Das*,² expressions are used which would seem to apply to an estate of inheritance, but the Court was there dealing with a case where there had been a succession by survivorship in a family governed by the Mitakshara school of law.

So far as the estate of the donor of a power of adoption is concerned, the only persons whose rights of inheritance are superior to those of his widow are his son, grandson, and great-grandson, during the lifetime of any one of whom no adoption can take place, and an heir of one of such persons, in whom the estate has been vested after his death. When the estate has vested in such heir the power is at an end,³ and no estate is divested by an attempted exercise of the power.⁴

Invalid
adoption.

Where the power is at an end,⁵ or from any other reason the adoption is invalid, the adoption does not even divest the interest of the woman who purports to adopt.⁶

The divesting of an estate taken as devisee under a will may perhaps stand upon a different footing.⁷

Where there is a provision in a will that the estate of the devisee should be divested on an adoption, and that the adopted son should take the property, such provision might be effectual.⁸

Consent to
divesting.

It is submitted that an estate cannot be divested by the mere consent of the person in whom it is vested.⁹

¹ See *post*, p. 192.

² (1891), 18 Calc. 385, at pp. 395, 396.

³ *Ante*, pp. 124, 125.

⁴ *Bhoobun Moyee Debia (Mussumat) v. Ramkishore Acharj Chowdhry* (1865), 10 M. I. A. 279, at pp. 311, 312; 3 W. R. P. C. 15, at p. 18; *Pudma Coomari Debi v. Court of Wards* (1881), 8 I. A. 229; 8 Calc. 302; *Thayammal v. Venkatarama Aiyar* (1887), 14 I. A. 67; 10 Mad. 205; *Drobomoyee Choudhrai v. Shama Churn Chowdhry* (1885), 12 Calc. 296; *Annamah v. Mabbu Bali Reddy* (1875), 8 Mad. H. C. 108; *Keshav Ramkrishna v. Govind Ganesh* (1884), 9 Bom. 94.

⁵ *Ante*, pp. 124, 125.

⁶ *Krishnarav Trimlak Hasabnis v. Shankarrav Vinayak Hasabnis* (1892), 17 Bom. 164.

⁷ See *Sarat Chandra Mullick v.*

Kanai Lal Chunder (1903), 8 C. W. N. 266, at p. 270.

⁸ See *Luckinarrain Tagore's* case; Sir F. Macnaghten's "Considerations on Hindu Law," p. 168; Sircar's "Vyavastha Darpana," 2nd ed., p. 842, referred to in *Bhoobun Moyee Debia (Mussumat) v. Ramkishore Acharjee* (1865), 10 M. I. A. 279, at p. 312; 3 W. R. P. C. 15, at p. 19.

⁹ The decision in *Annamah v. Mabbu Bali Reddy* (1875), 8 Mad. 108, at p. 112, where the estate was vested in the natural father, is express on this subject. See *Dharnidhar (Shri) v. Chinto* (1895), 20 Bom. 250, at p. 258; *Vasudeo Vishnu Manohar v. Ramchandra Vinayak Modak* (1896), 22 Bom. 551, at p. 555. In Bombay a different view was expressed in *Payapa Akkapa Patel v. Appanna*, 23 Bom. 327, at pp. 331, 332; *Gopal Balkrishna Kenjale v. Vishnu Raghu*

It is submitted that this question depends upon the question whether consent can validate an adoption, which is otherwise invalid.¹ If it has not such effect, then the divesting of an estate would, it seems, not be effected by the act of adoption, but only in the way provided by law for the transfer of property.²

Even if consent can operate to divest an estate a distinction might well be made between the cases in which the person so consenting is a full owner, and those in which the estate is vested in a qualified owner; in which latter cases the rights of the reversioners could scarcely be prejudiced by the consent.³

Even if the then immediate reversioners should also consent, it is by no means clear that the rights of the persons who should become entitled on the succession opening out would be affected.⁴

Where the consent is necessary for the purpose of validating the adoption, as in Madras,⁵ or Bombay,⁶ effect would be given to it. This question stands on a different footing.

The rule prohibiting the divesting of estates applies to ^{Impartible estate.} impartible estates, the succession to which depends upon inheritance.⁷

The rule is not affected by the circumstance that the adop- ^{Fraud.} tion has been delayed by fraud, even when the fraud has been practised by a person who has thereby procured the vesting of the estate in him.⁸

A widow whose estate is divested is entitled to maintenance ^{Maintenance of widow.} from the property.⁹

An adoption prevents the succession of persons who would ^{Persons taking after widow.}

nath Kenjale (1898), 23 Bom. 250; *Babu Anaji v. Ratnoji Krishnarav* (1895), 21 Bom. 319, and *Rupchand Hindumal v. Rakhmabai* (1871), 8 Bom. H. C. (A. C.) 114, at p. 122; *Bhimappa v. Basawa* (1905), 29 Bom. 400; 7 Bom. L. R. 405.

¹ *Ante*, pp. 150, 151.

² See Transfer of Property Act (IV. of 1882), s. 123.

³ This distinction was not made in the Bombay cases (above, note 2), which held that an estate could be divested by consent. Both in *Payapa Akkapa Patel v. Appanna* (1898), 23 Bom. 327, and in *Rupchand Hindumal v. Rakhmabai* (1871), 8 Bom. H. C. (A. C.) 114, the estate was vested in a female having a widow's estate.

⁴ See *Bahadur Singh v. Mohar Singh* (1901), 29 I. A. 1; 24 All. 94; 6 C. W. N. 169, at p. 174.

⁵ *Ante*, pp. 115, 116.

⁶ *Ante*, pp. 119, 120.

⁷ See *Vellanki Venkata Krishnu Row (Rajah) v. Venkatu Rama Lakshmi Narsayya* (1876), 4 I. A. 1; 1 Mad. 174; *post*, chap. xvii.

⁸ *Bhubaneswari Debi v. Nilkomul Lahiri* (1885), 12 I. A. 137; 12 Calc. 18; S. C. in Court below, *Nilkomul Lahuri v. Jotendro Mohun Lahuri* (1881), 7 Calc. 178; 8 C. L. R. 401.

⁹ *Jamnabai v. Raychand Nahalchand* (1883), 7 Bom. 225; *Rakhmabai v. Radhabai* (1868), 5 Bom. H. C. A. C. 181, at p. 193. As to the maintenance of a widow, see *ante*, pp. 74, 75.

otherwise take the estate after the widow whose estate is devested.¹

Devesting of
rights acquired
by survivor-
ship.

By adoption to a deceased member of a joint family governed by the Mitakshara law a person acquires such interest in the joint family property as he would have acquired if he had been natural born, and his adoption divests such interest as has passed over to other members of the family by survivorship.²

Illustration.

A and B, brothers, formed a joint Hindu family governed by the Mitakshara law. A died without male issue, leaving his wife, C, pregnant. Then B made a will directing his wife D to adopt a son, then B died. The next day C gave birth to a son E. Then D adopted F. F became entitled to share the property with E.³

Adoption would not, however, divest estates which had passed by inheritance from those who had acquired rights by survivorship.⁴

Impartible
estate.

In the case of an impartible estate, the succession to which is in a joint family governed by Mitakshara law, the estate of a person to whom a right has accrued by survivorship may be divested by an adoption to the holder whose rights have so survived.⁵

Power to
dispute acts of
widow.

An adopted son is not bound by unauthorized alienations⁶ made, or acts of waste committed by, the widow adopting

¹ As, for instance, a daughter, or daughter's son. *Ramkishan Surkeyl v. Srinuttee Dibia (Mussumaut)* (1824), 3 Ben. Sel. R. 367 (new edition, 489).

² See *Karunabdi Ganesa Ratnamaiyar v. Gopala Ratnamaiyar* (1880), 7 I. A. 173, at p. 179; 2 Mad. 270, at p. 281; *Sreeramulu v. Kristamma* (1902), 26 Mad. 143, at p. 152; *Surendra Nandan Das v. Sailaja Kant Das Mahapatra* (1891), 18 Calc. 385; *Chandra v. Gojarabai* (1890), 14 Bom. 463, at p. 467; *Vithoba v. Bapu* (1890), 15 Bom. 110, at p. 129; *Bachoo Harkisondas v. Mankorebai* (1904), 29 Bom. 51; 6 Bom. L. R. 268; affirmed on appeal (1907), 34 I. A. 107; 31 Bom. 373; 11 C. W. N. 769; 9 Bom. L. R. 646.

³ *Bachoo Harkisondas v. Mankorebai* (1909), 34 I. A. 107; 31 Bom.

373; 11 C. W. N. 769; 9 Bom. L. R. 646.

⁴ *Ante*, p. 187. See *Rupchand Hindumal v. Rakhmabai* (1871), 8 Bom. H. C. A. C. 114; *Chandra v. Gojarabai* (1890), 11 Bom. 463.

⁵ See *Raghunada (Sri) v. Brozo Kishore (Sri)* (1876), 3 I. A. 154; 1 Mad. 69; 25 W. R. C. R. 291, where the estate of an undivided half-brother, who had succeeded to an impartible zemindary, was divested. This case was misunderstood by the Calcutta High Court in *Kally Prosonno Ghose v. Gocool Chunder Mitter* (1877), 2 Calc. 295, at p. 309; see *Surendra Nandan Das v. Sailaja Kant Das Mahapatra* (1891), 18 Calc. 385, at p. 395.

⁶ As to her powers, see *post*, Chap. XV.

him, at the time when the property was vested in her,¹ or after the adoption,² or by the manager of the estate.

Thus an alienation made by the widow, even before the adoption, can be set aside at the instance of the adopted son, unless it be made under such circumstances as would bind the reversioners.³ The Madras High Court⁴ has held that even in the case where the transaction be not such as would have bound the reversioners, the alienee is entitled to retain possession during the lifetime or widowhood of the widow, as in the absence of an adoption she was competent to deal with her own personal interest,⁵ and the rights of the adopted son do not date before the adoption.⁶ There is an unreported decision of the Bombay High Court to the same effect,⁷ but other decisions of that Court have clearly held that the adopted son can avoid the whole transaction.⁸ It is submitted that this view is correct.

As to the limitation for a suit to set aside an alienation, see *Amrita Lal Bagchi v. Jatindra Nath Chowdhry* (1904), 32 Calc. 165.

It is submitted that the same right to question the acts of the adoptive mother applies where she has succeeded to the estate as mother of a previously adopted son or of a natural born son. In *Gobindo Nath Roy v. Ram Kanay Chowdhry*,⁹ it was held that the adopted son could not question an alienation made by the widow when she held the estate as mother, and that case was cited with approval in *Kally Prosonno Ghose v. Gocool*

¹ *Kishenmune (Ranee) v. Oodwunt Singh (Rajah)* (1824), 3 Ben. Sel. R. 220 (new edition, 304); *Sreenath Roy v. Ruttunmalla Chowdhraiy*, Ben. S. D. A. of 1859, 421; *Bamundoss Mookerjee v. Tarinee (Mussamat)* (1858), 7 M. I. A. 189, at p. 180; *Madura (Collector of) v. Moottoo Ramalinga Sathupathy* (1868), 12 M. I. A. 397, at p. 443; 1 B. L. R. P. C. 1, at p. 17; 10 W. R. (P. C.) 17, at p. 24; *Lakshman v. Radhabai* (1887), 11 Bom. 609; *Moro Narayan Joshi v. Balaji Raghunath* (1894), 19 Bom. 809, at p. 815; *Natraji Krishnaji v. Hari Jageji* (1871), 8 Bom. H. C. A. C. 67; *Ramakrishna v. Tripurabai* (1908), 33 Bom. 88; 10 Bom. L. R. 1029; *S. C. Ramakrishna Kuppaswami v. Tripurabai* (1911), 13 Bom. L. R. 940.

² *Amibika Partap Singh v. Dwarka Prasad* (1907), 30 All. 95; *Antaji v. Dattaji* (1893), 19 Bom. 36; *Doorga Soonduree v. Gourespersaud*, Ben. S. D. A. of 1856, p. 170.

³ Cases ante, notes 1 and 2.

⁴ *Sreeramulu v. Kristamma* (1902), 26 Mad. 143. See Sircar's "Law of

Adoption," pp. 417, 418.

⁵ *Sahodra (Mussummat Bebea) v. Roy Jung Bahadoor* (1881), 8 I. A. 210; 8 Calc. 224; *Gobindmani Dasi v. Sham Lal Bysak* (1864), B. L. R. Sup. Vol. 48; W. R. 1864, C. R. 165; *Periya Gaundan v. Tirumala Gaundan* (1863), 1 Mad. H. C. 206; *Bhagavatamma v. Pampanna Gaud* (1865), 2 Mad. H. C. 393; *Kamavadhani Venkata Subbaiya v. Joya Narasingappa* (1866), 3 Mad. H. C. 116; *Ramchandra Mankeshwar v. Bhimrav Ravji* (1877), 1 Bom. 577; *Melgirappa v. Shivappa* (1869), 6 Bom. H. C. A. C. 270; *Mayaram Bhairam v. Motiram Govindram* (1886), 2 Bom. H. C. A. C. 313; *Prag Das v. Hari Kishn* (1877), 1 All. 503.

⁶ Ante, p. 172.

⁷ *Bhaudixit v. Ishwardixit*, S. A. No. 146 of 1905.

⁸ *Ramakrishna v. Tripurabai* (1908), 33 Bom. 88; 10 Bom. L. R. 1029; *Lakshman v. Radhabai* (1887), 11 Bom. 609; *Moro Narayan Joshi v. Balaji Raghunath* (1894), 19 Bom. 809.

⁹ (1875), 24 W. R. C. R. 183.

Chunder Mitter,¹ and in *Lakshman v. Radhabai*,² but in neither of such two cases did this particular question arise. Mr. Mayne³ says, as to the first-named decision, "The decision was given without any inquiry as to the propriety of the alienation, and was rested on the authority of *Chundrabullee's* case."⁴ It does not seem to have occurred to the Court that a mother had no more than a limited estate, which, upon the authority of the case cited, was devested by the adoption. The son then came in for all rights which had not been lawfully disposed of, or barred, during the continuance of that estate."

It is doubtful whether a widow can, when adopting, stipulate that her management of the property shall not be inquired into. Apparently she would have no such power.⁵

Assent of
reversioners.

If at any time before the adoption all the then immediate reversioners assented to the alienation or act of waste, it cannot be questioned by the adopted son.⁶

The adopted son is bound by all acts of the widow within her authority.

A decree against a Hindu widow as representing her husband's estate binds her minor adopted son, and after the adoption the appeal, being for his benefit, must be considered as prosecuted on his behalf, even though he is not made a party thereto.⁷

An adopted son is not entitled to any account of the rents or profits of the estate rightfully received before his adoption by the widow or other person whose estate is devested by his adoption.⁸

Alienation by
father under
Mitakshara
law.

In the case of a joint family governed by the Mitakshara law, an adopted son is bound by an alienation made by his adoptive father, or by any other manager of the family, to the same extent as a natural son is bound.⁹

He cannot dispute an alienation made by the adoptive father before his adoption,¹⁰ or any alienation of the separate property of such father.

¹ (1877), 2 Calc. 295, at pp. 307, 308.

² (1887), 11 Bom. 609, at p. 615.

³ "Hindu Law," 7th ed., pp. 260, 261.

⁴ (1865), 10 M. I. A. 279; 3 W. R. P. C. 15.

⁵ See ante, pp. 179, 180.

⁶ *Rajkrishna Roy v. Kishoree Mohun Mojomdar* (1865), 3 W. R. C. R. 14. Post, pp. 468, 469.

⁷ *Hari Saran Meitra v. Bhubaneswari Debi* (1888), 15 I. A. 195; 16

Calc. 40.

⁸ See ante, p. 172.

⁹ See *Rambhat v. Lakshman Chintaman Mayalay* (1881), 5 Bom. 630, at p. 635. As to the right of a natural son, see post, p. 271 et seq. As to whether the father can by an arrangement made at the time of the adoption preclude the son from disputing his acts with regard to the property, see ante, pp. 178, 179.

¹⁰ *Rambhat v. Lakshman Chintaman Mayalay* (1881), 5 Bom. 630.

In cases governed by the Bengal school of law, an adopted ^{Bengal school,} son cannot dispute alienations of property, whether ancestral or self-acquired, made by his adoptive father.¹

Where the adoption divests the estate of a male holder,² the adopted son cannot question his alienations to the extent of ousting a *bond fide* holder for value, nor can he require an account of rents and profits.³ ^{Alienations by male owner.}

He might, perhaps, where the proceeds of the alienation had been earmarked, or not spent, require the alienor to account for such proceeds.

Adoption does not sever the tie of blood which exists between the adopted son and the members of his natural family. He cannot, therefore, marry in his natural family within the prohibited degrees,⁴ nor can he take in adoption therefrom a boy whom he could not have adopted if he had himself remained in that family.⁵ ^{Marriage and adoption in natural family.}

A *Kritrima* adoption does not transfer the subject of it from his natural family. It gives him, in addition to his rights in that family,⁶ rights of inheritance to the person (man or woman) actually adopting him,⁷ and to no one else.⁸ ^{Effect of Kritrima adoption.}

His sons acquire no right of inheritance to his adoptive father.⁹

If a husband and wife jointly adopt he inherits to both. If the husband adopts one son and the wife another, the sons inherit and offer oblations to each respectively.¹⁰

¹ *Ante*, p. 172.

² *Ante*, pp. 187-190.

³ See *Raghunada (Sri) v. Brozo Kishoro (Sri)* (1876), 3 I. A. 154, at pp. 193, 194; 1 Mad. 69, at pp. 83, 84; 25 W. R. C. R. 291, at p. 303.

⁴ See *ante*, pp. 40, 41.

⁵ E.g. he cannot adopt his own natural brother. *Moolia Moodelly v. Uppen*, Mad. S. D. 1858, p. 117; Norton, L. C. i. 66, referred to in *Narasamma v. Balaramachari* (1863), 1 Mad. H. C. 420, at p. 426, note a.

⁶ *Deepoo (Mussumaut) v. Gowreesunker* (1824), 3 Ben. Sel. R. 307 (new edition, 410); *Srinath Serma v. Radhakaunt* (1796), 1 Ben. Sel. R. 15, note to p. 16 (new edition, 19, note to p. 21).

⁷ *Durgopal Singh v. Roopun Singh* (1839), 6 Ben. Sel. R. 271 (new edi-

tion, 340); *Deepoo (Mussumaut) v. Gowreesunker* (1824), 3 Ben. Sel. R. 307 (new edition, 410).

⁸ *Shib Koeree (Mussumut) v. Joo-gun Singh* (1867), 8 W. R. C. R. 154; *Sreenarain Rai v. Bhya Jha* (1812), 2 Ben. Sel. R. 23, at p. 27 (new edition, 29, at p. 34); *Collector of Tirhoot v. Huopershad Mohunt* (1867), 7 W. R. C. R. 500.

⁹ *Juswant Singh (Baboo) v. Doolee Chund* (1876), 25 W. R. C. R. 255. They would, of course, possess the ordinary rights of inheritance to property which was vested in their father.

¹⁰ See answers of pundits in *Sreenarain Rai v. Bhya Jha* (1812), 2 Ben. Sel. R. 23, at p. 27 (new edition, 29, at p. 34); W. Macnaghten's "Hindu Law," vol. i. p. 101.

This kind of adoption is purely contractual. There is no fiction of a new birth into the adoptive family. The son adopted "does not lose his claim to his own family, nor assume the surname of his adoptive father; he merely performs obsequies and takes the inheritance."¹

He may perform the obsequies of his natural father or mother,² and also those of his adopters. He would apparently be in the same position as to rights of survivorship in ancestral property in his adoptive family as a natural-born son would be.³

EFFECTS OF INVALID ADOPTION.

Effect of
invalid
adoption.

Where there has been an adoption in form, but such adoption is for any reason invalid, the adopted son does not acquire any rights, as such, in the family of the person purporting to adopt him, except so far as he may be entitled to maintenance.⁴

Decrees against him, and acts by him, would not bind the estate.

The following are the cases of an invalid adoption:—

(i.) Where there is in existence a son begotten or adopted.⁵

(ii.) Simultaneous adoption of more than one son.⁶

(iii.) Adoption of the same boy by two persons.⁷

(iv.) Adoption by a woman without authority.⁸

(v.) Adoption of a boy of a different primary caste.⁹

(vi.) Adoption of a boy within the prohibited degrees.¹⁰

(vii.) Adoption of a boy where the performance of initiatory ceremonies or marriage before adoption makes the adoption invalid.¹¹

Right of
maintenance.

It is unsettled whether, on the adoption being set aside, the boy can revert to his natural family, and whether he has any right of maintenance in his adoptive family.

In Bengal, if not throughout India, it would seem that a member of one of the regenerate classes who had been invested with the sacred thread in his new family, or a Sudra who has undergone the ceremony of marriage in his new family, cannot revert to his natural family, but he would apparently be entitled so to revert before the happening of those events, and would acquire no rights of maintenance in the new family,¹² at any rate

¹ Colebrooke's "Digest," vol. i p. 276, n.; 1 W. Macnaghten's "Hindu Law," p. 76.

² See *Purmessur Dutt Jha (Chowdree) v. Hunooman Dutt Roy* (1837), 6 Ben. Sel. R. 192 (new edition, 235, at p. 240).

³ See Sircar's "Law of Adoption," p. 451.

⁴ *Ranjit Singh (Raja) v. Ram Chandra Mookerjee* (1899), 4 C. W. N. 415.

⁵ *Ante*, pp. 99, 100.

⁶ *Ante*, pp. 143, 144.

⁷ *Ante*, p. 143.

⁸ *Ante*, p. 114.

⁹ *Ante*, p. 132.

¹⁰ *Ante*, p. 133.

¹¹ *Ante*, p. 141.

¹² See *Rajcoomaree Dossee (Sreemutty) v. Nobocomar Mullick* (1856), 1 Boulinois, 137; 2 Seyestre, 641, note, in which the Court considered that where there has been no power

if there had not been a valid giving and receiving.¹ Where the above-mentioned ceremonies have been performed, or where there is a valid giving and receiving, but the adoption is invalid on account of some personal defect such as the fact that the boy belonged to a different class from that of his adoptive father, there is authority that he would acquire a right of maintenance.²

It has been held in Madras that where the adoption was invalid on the ground of want of authority to take, there is no right of maintenance,³ and that decision has been followed in Bombay.⁴

The difficulty in determining the rights of a person whose adoption is invalid arises from the absence of direct authority on the question as to when (if at all) he can revert to his natural family.

Where he can so revert, and loses nothing by the infructuous adoption, no hardship occurs. On the other hand, where he cannot so revert, as when he has been fixed by religious ceremonies in the family of the adopter,⁵ or, perhaps, wherever there has been an actual giving and receiving by persons competent to give and receive,⁶ it is right that he should, if possible, receive some compensation for the loss of inheritance in both families. His maintenance is the proper measure of compensation.

But where there is a gift of a boy to a person incompetent to receive, or by a person incompetent to give, the difficulty is the greater. If blame for the invalidity of the adoption can be attached to the adoptive father, as where he has omitted to satisfy himself as to the competency of the donor, or where he has given a power, which is in law invalid, it seems right that his estate should bear the burden of the maintenance. If the reversioner has delayed in challenging the adoption, it may also be equitable to require the estate to bear the burden of maintenance. Where there has been no such delay, and no blame can be attached to the adoptive father, it seems hard upon the reversioner that his interest should be affected by a

to take in adoption, the performance of the ceremonies will not prevent a return to the natural family. As to this case, G. C. Sircar says ("Law of Adoption," p. 424), "We have already seen that the performance of the initiatory ceremonies upon a person in the name of a *gotra* is considered to have the effect of irrevocably fixing his position in that *gotra*, hence a person upon whom these ceremonies have been performed in the name of the adoptive family cannot return to his own, notwithstanding the adoption may be invalid (*Rupee Bhudr v. Roopshunker* (1823), 2 Borrodalle, 656). It is difficult to see why that rule would not govern the case of an adoption that was made by an unauthorized widow; for the ceremonies in such a case also must be performed in the name of her husband's *gotra*."

¹ See *Bawani Sankara Pandit v. Ambabay Ammal* (1863), 1 Mad. H. C. 363; *Lakshmappa v. Ramava* (1875), 12 Bom. H. C. 362, at p. 397.

² See *Bawani Sankara Pandit v. Ambabay Ammal* (1863), 1 Mad. H. C. 363, at p. 367; Strange's "Hindu Law," vol. 1. pp. 82, 83. In Strange's "Manual," para. 119, a right of maintenance is asserted in every case of an invalid adoption "*Dattaka Chandrika*," chap. i. ss. 14, 15; G. C. Sircar's "Law of Adoption," pp. 420-423.

³ *Bawani Sankara Pandit v. Ambabay Ammal* (1863), 1 Mad. H. C. 363.

⁴ *Lakshmappa v. Ramava* (1875), 12 Bom. H. C. 364, at p. 397.

⁵ *Rajcoomaree Dossee (Greesmuddy) v. Nobocoomar Mullick* (1856), 1 Boul. 137; Sevestre, 64, note.

⁶ Sircar's "Law of Adoption," p. 421.

charge which owes its origin to an unauthorized act. It is impossible to lay down any exact rule for adjusting these equities. The right might properly depend upon the circumstances of each case.

Descendants.

A right of maintenance would apparently not extend to the descendants of the person invalidly adopted.¹ The only texts which provide for the maintenance of persons invalidly adopted, except with regard to those belonging to a class different from that of the adopted father,² only contemplate the expenses of the marriage being provided.³

Arrangement.

In some cases a boy whose adoption is invalid can take advantage of an arrangement made at the time of his adoption, or thereafter.

In *Rungama v. Atchama* ⁴ the father had divided an ancestral property between a validly adopted son and a son whose adoption was subsequently held to be invalid at the instance of the son who had been validly adopted. The latter was required to compensate the former out of separate property belonging to the father.

In *Surendra Keshav Roy v. Doorgasundari Dassee*,⁵ an arrangement affecting the rights of two boys who were adopted simultaneously by two widows was enforced against such widows.

Gift to person erroneously described as adopted.

The invalidity of an adoption would not invalidate a gift by will or otherwise to a person erroneously described as an adopted son,⁶ unless it appear that the validity of the adoption was a condition of,⁷ or the motive for,⁸ the gift.

A gift or bequest to a described person with a direction that he should be adopted as a son to the donor or testator takes effect, even in the absence of such adoption,⁹ unless it appears that the adoption was a

¹ In *Bawani Sankara Pandit v. Ambabay Ammal* (1863), 1 Mad. H. C. 363, at p. 367, the question was suggested, but not decided.

² "Dattaka Chandrika," s. 1, paras. 14, 15.

³ "Dattaka Mimamsa," s. 5, paras. 45, 46; "Dattaka Chandrika," s. 2, paras. 17; s. 6, 3.

⁴ (1846), 4 M. I. A. 1, at p. 103; 7 W. R. P. C. 57, at p. 62.

⁵ (1892), 19 I. A. 108; 19 Cal. 108.

⁶ *Bireswar Mookerji v. Ardha Chunder Roy Chowdhry* (1892), 19 I. A. 101; 19 Cal. 452; *Jivani Bhai v. Jivu Bhai* (1865), 2 Mad. H. C. 462; *Lali v. Murlidhar* (1901), 24 All. 195; S. C. on appeal (1906), 33 I. A. 97; 28 All. 488; 10 C. W. N.

130; *Lalta Prasad v. Salig Ram* (1908), 31 All. 5; *Murari Lal v. Kundan Lal* (1909), *ibid.* 339.

⁷ See cases, *post*, p. 199, note 1, *Manjamma v. Sheshgiri Rao* (1902), 28 Bom. 491, at p. 496; 4 Bom. L. R. 116.

⁸ *Fanindra Deb Baikat v. Rajeswar Das* (1884), 12 I. A. 72; 11 Calc. 463; *Lali (Mussummat) v. Murlidhar* (1906), 33 I. A. 97; 28 All. 488; 10 C. W. N. 130; *Vandrayan Jekisan (Patel) v. Manilal Chunilal (Patel)* (1890), 15 Bom. 565, at p. 573; *Siddesory Dossas v. Doorgachurn Sett* (1865), 2 Ind. Jur. N. S. 22; Bourke (O. C.), 360.

⁹ *Nidhoomoni Debya v. Saroda Pershad Mookerjee* (1876), 3 I. A. 253; 26 W. R. C. R. 91; *Subbarayer v. Subbammal* (1900), 27 I. A. 162;

condition of the gift.¹ If it be reasonably clear that the testator would not have made the gift had it not been for the supposed existence of the character of an adopted son, the Court will construe the mention of the character as imposing a condition precedent to the gift.²

Where there is a bequest or gift to an unascertained person to be adopted hereafter by the widow of the testator, only a person whose adoption is valid in law can take, even if a valid adoption be inconsistent with the conditions of the gift.³

24 Mad. 214; 4 C. W. N. 304; 2 Bom. L. R. 982. In *Monemthoonanth Dey v. Onontnenth Dey* (1865), 2 Ind. Jur. N. S. 24, there was an actual adoption of two designated persons in accordance with an invalid power. The gift was upheld.

¹ *Karamsi Madhowji v. Karsandas Natha* (1896), 20 Bom. 718; S. C. on appeal (1898), 23 Bom. 271; *Abbu v. Kuppammal* (1892), 16 Mad. 355; *Shamavahoo v. Dwarkadas Vasanji* (1878), 12 Bom. 202; *Abhai Chavan Ghose v. Dasmoni Das (S. M.)* (1871), 6 B. L. R. 623, differing on the construction of the same will from *Dossmoney Dossee v. Prosonomoye Dossee* (1866), 2 Ind. Jur. N. S. 19;

Manjamma v. Sheshgirirao (1902), 26 Bom. 491, at p. 496; *Probodh Lal Kundu v. Harish Chandra Dey* (1904), 9 C. W. N. 309. See Indian Succession Act (X. of 1865), ss. 113-123, applied to certain Hindu wills by the Hindu Wills Act (XXI. of 1870).

² *Siddessory Dossee v. Doograchurn Sett* (1865), 2 Ind. Jur. N. S. 22; Bourke (O. C.), 360.

³ See *Surendra Keshav Roy v. Doorgasundari Dassee* (1892), 19 I. A. 108; 19 Calc. 513; S. C. in Court below (1886), 12 Calc. 686, where the bequest was to two boys to be simultaneously adopted as sons to the testator.

CHAPTER V.

PARENT AND CHILD (*continued*).

DUTIES AND RIGHTS OF FATHER.

Maintenance.

Maintenance
of children.

It is the duty of a Hindu father to maintain his minor sons¹ and unmarried daughters, provided they are not interested in property sufficient for their support, or are not otherwise capable of maintaining themselves.²

It is his duty to provide the marriage expenses of his daughters, and to cause his son to be educated in accordance with his station in life.

There is no obligation to maintain an adult son,³ except, perhaps, when he is suffering from a disease which⁴ prevents him from maintaining himself.⁴

With the exception of a case in Bengal, where it was held that a suit would lie by the mother of an illegitimate child against the putative father for the maintenance of the child,⁵ and of a case in Madras where a decree was given at the instance of an illegitimate son,⁶ the Reports

¹ Whether natural born, or adopted.

² "Manu," chap. ix. para. 108; chap. xi. paras. 9, 10; Colebrooke's "Digest," vol. ii. pp. 112, 113; vol. iii. p. 5; Strange's "Hindu Law," vol. i. p. 67.

³ *Ammakannu v. Appu* (1887), 11 Mad. 91; *Premchand Peparah v. Hulashchand Peparah* (1869), 4 B. L. R. App. 23; 12 W. C. R. R. 494; *Ramchandra Sakharam Vagh v. Sakharam Gopal Vagh* (1877), 2 Bom. 346, at p. 350.

⁴ See *Premchand Peparah v. Hulashchand Peparah*, 4 B. L. R. App. 23; 12 W. C. R. R. 494.

⁵ *Ghana Kanta Mohanta v. Gireli*

(1904), 32 Calc. 479. In that decision the learned judges relied upon *Ran Murdun Syn* (*Chucturya*) v. *Sahub Furhulad Syn* (1857), 7 M. I. A. 18; 4 W. R. P. C. 132, which was a suit claiming maintenance out of a deceased father's estate. The judges go on to say, "But apart from the Hindu law, we should think that, upon general principles, the defendant, having begotten the child, is bound to provide for its maintenance, if that is necessary." It is submitted that there are no grounds for this general proposition.

⁶ *Kuppa v. Singaravelu* (1885), 8 Mar. 395.

do not show any successful cases of proceedings in Civil Courts against a father for the maintenance of his child. It seems doubtful whether the duty can be enforced in a Civil Court,¹ but it is submitted that if an illegitimate son can enforce such right, legitimate sons are equally entitled.

It is clear that even if there be a right to maintenance, separate maintenance can only be awarded under very special circumstances.²

On the death of the father the maintenance of unmarried daughters, and the expenses of their marriage, must be provided out of his property.³

Although on her marriage a daughter ceases to belong to her father's family,⁴ and must first look to her husband⁵ and his family⁶ for her maintenance, there is a moral duty to maintain a married daughter who is without means, and who is unable to obtain support from her husband, or after his death from his family. This duty is not enforceable during the father's lifetime, and it has been held that it is not enforceable against his property after his death.⁷

Where a son or other heir is excluded from inheritance on account of disability, he is entitled to maintenance for himself and his family out of the property which he would have inherited.⁸

A father may be compelled, by proceedings under the Criminal Procedure Code,⁹ to maintain his legitimate or illegitimate child, of whatever age he or she may be, who is unable to maintain himself or herself.

As to the rights of children to maintenance out of coparcenary property, see *post*, pp. 227, 260.

¹ K. K. Bhattacharya ("Law of the Joint Hindu Family," pp. 282, 283) repudiates, however, any distinction between a moral and a legal obligation, except in the Bengal school.

² See *Shavatri (Ilata) v. Narayanan Nambudiri (Ilata)* (1863), 1 Mad. H. C. 372.

³ See *Mangal (Bas) v. Rukhmini (Bas)* (1898), 23 Bom. 291; *Tulsha v. Gopal Rai* (1884), 6 All. 632; Macnaghten's "Hindu Law," vol. ii. chap. ii. case 10; "Vyavastha Darpana," 2nd ed., p. 370.

⁴ *Ante*, p. 56.

⁵ *Ante*, p. 72.

⁶ *Ante*, pp. 74, 75.

⁷ *Mangal (Bas) v. Rukhmini (Bas)* (1898), 23 Bom. 291. See, however, *Mokhada Dassee v. Nundo Lal Haldar* (1901), 28 Calc. 278, at p. 288; 5 C. W. N. 297, at p. 300. Macnaghten's "Hindu Law," vol. ii. chap. ii. case 10.

⁸ "Mitakshara," chap. ii. s. 10, para. 5; "Dayabhaga," chap. v. paras. 11, 14-16; "Smṛiti Chandrika," chap. v. paras. 10-14, 20.

⁹ Act V. of 1898, chap. xxxvi.

Illegitimate
sons.

A Hindu is bound to provide for the maintenance of his minor ¹ illegitimate sons ² by Hindu mothers.³

After his death his illegitimate sons are entitled to maintenance out of his estate, or out of property in which he was a coparcener,⁴ whether impartible or not,⁵ if he was a member of one of the regenerate classes.⁶ If he was a Sudra they are only so entitled in case they are not entitled to inherit,⁷ or to a share on partition.

Under the Bengal school of law, this right against the father ceases on the sons attaining majority,⁸ but it is submitted that after the father's death there is a right against his property, even if they are adults.⁹ Under the Mitakshara school, they continue entitled to maintenance out of coparcenary property,¹⁰ whether impartible or not, and also out of self-acquired property

¹ *Nilmoney Singh Deo v. Baneshur* (1878), 4 Calc. 91.

² *Ghana Kanta Mohanta v. Gereli* (1904), 32 Calc. 479 (see ante, p. 200); *Kuppa v. Singaravela* (1885), 8 Mad. 325.

³ There is no text of Hindu law under which an illegitimate son of a Hindu by a woman who is not a Hindu can claim maintenance, and in none of the reported cases has maintenance ever been awarded to an illegitimate son who was not a Hindu by birth. *Lingappa Goundan v. Erudasan* (1903), 27 Mad. 13, at p. 15. See *Addoyto Churn Doss v. Woojan Beebee* (1879), 4 C. L. R. 164.

⁴ *Roshan Singh v. Balwant Singh* (1899), 27 I. A. 51; 22 All. 191; 4 C. W. N. 353; 2 Bom. L. R. 529.

⁵ *Run Murdun Syn (Chuotorya) v. Sahub Purhulad Syn* (1857), 7 M. I. A. 18; 4 W. R. P. C. 132; *Muttusawmy Jagavera Yettappa Naicker v. Vencataswara Yettaya* (1868), 12 M. I. A. 203; 2 B. L. R. P. C. 15; 11 W. R. P. C. 6; S. C. on remand, *Coomara Yettapa Naskar v. Venkateswara Yettia* (1870), 5 Mad. H. C. 405; *Pandaiya Telaver v. Puli Telaver* (1863), 1 Mad. H. C. 478, at p. 482.

⁶ *Run Murdun Syn (Chuotorya) v. Sahub Purhulad Syn* (1857), 7 M. I. A. 18; 4 W. R. P. C. 132; *Parichat (Rajah) v. Zahm Singh* (1877), 4 I. A. 159; 3 Calc. 214.

⁷ *Run Murdun Syn (Chuotorya) v. Sahub Purhulad Syn* (1857), 7 M. I. A. 18; 4 W. R. P. C. 132; *Inderun Valungypooly Taver v. Ramasawmy Pandya Talaver* (1869), 13 M. I. A. 141, at p. 159; 3 B. L. R. P. C. 1, at p. 4; 12 W. R. P. C. 41, at p. 43; *Muttusawmy Jagavera Yettappa Naicker v. Vencataswara Yettaya* (1868), 12 M. I. A. 203; 2 B. L. R. P. C. 15; 11 W. R. P. C. 6.

⁸ *Nilmoney Singh Deo v. Baneshur* (1878), 4 Calc. 91.

⁹ See "Dayabhaga," chap. ix. para. 28.

¹⁰ *Hargobind Kuari v. Dharam Singh* (1884), 6 All. 329; *Pershad Singh v. Mukhesree (Ranee)* (1821), 3 Ben. Sel. R. 132 (new edition, 176); *Rahi v. Govinda Valad Teja* (1876), 1 Bom. 97; "Mitakshara," chap. i. s. 12, para. 3; "Dayabhaga," ch. ix. para. 28; "Vyavahara Mayukha," chap. iv. s. 4, para. 30. These texts are founded on a passage of "Vrihaspati," which confines the right to the case where there is no other offspring.

which was owned by the father ; but the right does not descend to their children.¹

It has been said by the Allahabad High Court in a case² governed by the Mitakshara school of law, "Obedience to the head of the family, not the age of the illegitimate descendant, or his capacity to earn his own livelihood, is the test by which, under Hindu law, the continuance of the right to receive maintenance must be decided. Till the illegitimate sons reach full age, this test cannot be applied, but thereafter it cannot be ignored. What constitutes docility or disobedience, in the sense of the texts, is a question the answer of which is not easy ; but we think that the true answer is indicated in a *Vaivastha*, translated as No. 2, Book I. chapter vi. section 2, of Messrs. West and Bühler's collection (ed. 1878, p. 276), and we think that, on attaining full age, the respondents must, as a condition of receiving maintenance from the estate of Mauji Lal (the father), render to the head of the family such reasonable service as is ordinarily rendered by cadets of a family in that station of life to which the parties belong."

"The Court would presume the natural son qualified to receive maintenance, unless the opposite party could show what, in the contemplation of the law, is a legal disqualification."³

The right of maintenance is not affected by the child being the result of a casual connection,⁴ or by the connection between the parents being adulterous.⁵

The maintenance of an illegitimate son may, like the maintenance of other persons entitled thereto,⁶ be secured on the property out of which he is entitled to be maintained.⁷

In a Madras case⁸ it was said, "In determining the rate of maintenance, an illegitimate member of a family, who is not entitled to inherit, can be allowed only a compassionate rate of maintenance, and he cannot claim maintenance on the same principles and on the same scale as disqualified heirs and females who have become members of the family by marriage. In fixing, however, the compassionate rate of maintenance for the plaintiff, regard, no doubt, should be had to the interest of his deceased father in the joint family property and the position of his mother's family."

The right of an illegitimate daughter to maintenance under the Hindu law has been denied.⁹

¹ *Roshan Singh v. Balwant Singh* (1899), 27 I. A. 51; 22 All. 191; 4 C. W. N. 253; 2 Bom. L. R. 529; S. C. in Court below (1896), 18 All. 253.

² *Hargobind Kuari v. Dharam Singh* (1884), 6 All. 329, at p. 335.

³ Strange's "Hindu Law," vol. ii. p. 71.

⁴ See *Muttusamy Jagavira Yettapa Naikar v. Venkatasubha Yettia* (1865), 2 Mad. H. C. 293; S. C. on appeal (1868), 12 M. I. A. 203 (see p. 220); 2 B. L. R. P. C. 15 (see p. 20); 11

W. R. P. C. 6 (see p. 9).

⁵ *Viraramuthu Udayan v. Singaravelu* (1877), 1 Mad. 306; *Rahi v. Govinda Valad Teja* (1875), 1 Bom. 97; *Subramania Mudali v. Valu* (1910), 34 Mad. 68.

⁶ *Ante*, p. 85.

⁷ *Ananthaya v. Vishnu* (1893), 17 Mad. 160.

⁸ *Gopalasami Chetti v. Arunachelam Chetti* (1903), 27 Mad. 32, at pp. 36, 37.

⁹ *Parvati v. Gangatrao Balal*

Maintenance
of widowed
daughter-in-
law.

A Hindu is morally, although not legally, bound to maintain the widow of his son, even "if he has no fund with the disposal of which his son, if alive, could interfere, and if he has inherited nothing from his son, and has not had his rights in any property enlarged by his son's death."¹

Where her husband had been a coparcener, she is entitled to be maintained out of the coparcenary property² although she may have lived apart from him.³

The fact that the father-in-law had sold coparcenary property to pay his debts does not render him liable for his daughter-in-law's maintenance.⁴

After his death, the persons who inherit his property, or whose interest in property is enlarged by his death, are legally bound to maintain his daughter-in-law, if chaste,⁵ out of the property which they have so inherited, or in which their interest has been enlarged, whether the property be coparcenary or self-acquired.⁶

(1893), 18 Bom. 177, at p. 183. It was not necessary to decide the point in that case

¹ *Janki v Nand Ram* (1888), 11 All. 194, at pp. 198-200; *Ammakannu v Appu* (1887), 11 Mad. 91; *Kalu v. Kashibai* (1882), 7 Bom. 127; *Ganga Bai v. Sitaram* (1876), 1 All. 170; *Khetramani Dasi v. Kashinath Das* (1868), 2 B. L. R. A. C. 15; *S. C. Kasheenath Das v. Khetur Monee Dossee*, 9 W. R. C. R. 413, differing from *Kooder Monee Deba v. Tarra Chand Chuckerbutty* (1865), 2 W. R. C. R. 134; *Khetur Monee Dossee v. Kasheenath Das* (1868), 10 W. R. F. B. 89; *Rujjomoney Dossee v. Shibchunder Mullick* (1864), 2 Hyde, 103; *Yamunabai v. Manubai* (1899), 23 Bom. 608, at p. 609; 1 Bom. L. R. 95; *Adhibai v. Cursandas Nathu* (1886), 11 Bom. 199, at p. 207; *Hema Kooree (Mussamut) v. Ajoodhya Persad* (1875), 24 W. R. C. R. 474. In *Chandrabhagabai v. Kashinath* (1866), 2 Bom. H. C. 323, the father-in-law was held liable for his daughter-in-law's maintenance, but that decision was differed from in *Savitribai v. Luximibai* (1878), 2 Bom. 573, at pp. 583, 584. See *Debur Ramnath*

Roy Chowdhry v. Arnee Kally Debia (Sreemutty) W. R. 1864, C. R. 177.

² *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 521, see post, pp. 227, 260.

³ *Surampalli Bangaramav. Surampalli Brambaze* (1908), 31 Mad. 338.

⁴ *Ganga Bai v. Sitaram* (1876), 1 All. 170, at p. 177.

⁵ *Kooder Monee Dabee v. Tarra Chand Chuckerbutty* (1865), 2 W. R. C. R. 134.

⁶ *Siddessury Dassee v. Janardan Sarkar* (1902), 29 Calc. 557; 6 C. W. N. 530; *Janki v. Nandram* (1888), 11 All. 194; *Kamini Dassee v. Chandra Pole Mundle* (1889), 17 Calc. 373; *Yamunabai v. Manubai* (1899), 23 Bom. 608; 1 Bom. L. R. 95; *Kooder Monee Dabee v. Tarra Chand Chuckerbutty* (1865), 2 W. R. C. R. 134. See *Rangammal v. Echammal* (1898), 22 Mad. 305, at p. 307; *Dev Persad v. Gunwanti Koer* (1895), 22 Calc. 410, at p. 417; *Adhibai v. Cursandas Nathu* (1886), 11 Bom. 199; *Surampalli Bangaramma v. Surampalli Brambone* (1908), 31 Mad. 338; *Rujjomoney Dossee v. Shibchunder Mullick* (1864), 2 Hyde, 103, at pp. 104, 105; Jolly's "History of

This right does not interfere with the father-in-law's power to dispose of his self-acquired property by will.¹

The daughter-in-law does not lose her right by declining to reside in her father-in-law's house.²

In a Bengal case³ maintenance was allotted by an implied contract to a son-in-law, son-in-law, who had lived in his father-in-law's house.

Where the property of the father is impartible, and subject to the law of primogeniture, sons, even if adult, and capable of earning subsistence, are entitled to maintenance where the Mitakshara school of law applies.⁴ They are also so entitled after his death, as against their brother or the person in possession,⁵ whether, it is submitted, they are governed by the Bengal or the Mitakshara school. Their descendants have no such right.⁶

Grandsons have not, as such, any right to be maintained by their grandfather,⁷ but apparently they have a right to be maintained out of his property if unable to maintain themselves, and granddaughters must be so maintained until marriage.⁸

The marriage expenses of a granddaughter have been held to be properly payable out of deceased grandfather's estate.⁹

A Hindu is bound to support his father and mother if they

Impartible property.

Grand-children.

Maintenance of parents.

the Hindu Law," pp. 134, 135; West and Bühler, 3rd ed., pp. 245-252. *Contra Ammakannu v. Appu* (1887), 11 Mad. 91; *Komulmun Dasee v. Bodhnarain Mijmoodar* (1823), 2 Maon. H. L. 119; "Smṛti Chandrika" (Krishnasawmi Iyer's translation), chap. xi. s. 1, para. 34; Mitakshara on Subtraction of Gift, cited Strange's "Manual," para. 209.

¹ *Parvati (Bai) v. Tarwad: Dolaṣṭram* (1900), 25 Bom. 263; 2 Bom. L. R. 894. See, however, *Rangammal v. Echammal* (1898), 22 Mad. 305, at p. 307.

² *Siddeswary Dasee v. Janardan Sarkar* (1903), 29 Calo. 557; 6 C. W. N. 530. See ante, p. 77.

³ *Govind Rani Dasi v. Radha Ballabh Das* (1919), 15 C. W. N. 205.

⁴ *Himmatasing Becharasing v. Ganpatsing* (1875), 12 Bom. H. C. 94; *Ramchandra Sakharam Vagh v. Sakharam Gopal Vagh* (1877), 2 Bom. 346.

⁵ *Mallikarjuna Prasada Nayudu (Raja Yarlagadda) v. Durga Prasada Nayudu (Raja Yarlagadda)* (1900), 27 I. A. 151; 24 Mad. 147; 5 C. W. N. 74; 2 Bom. L. R. 945. As to maintenance from *Saranjams*, see *Madhavav Manohar v. Atmaram Keshav* (1890), 15 Bom. 519.

⁶ See *Nilmony Sing Deo v. Hingoo Lall Singh Deo* (1879), 5 Calo. 256. As to a grant in lieu of maintenance see *Raja Jee Bahadur Garu (Raja) v. Parthasaradhi Appa Row* (1902), 30 I. A. 14; 26 Mad. 202; 8 C. W. N. 105.

⁷ *Kalu v. Kashiba* (1882), 7 Bom. 127; *Manmahini Dasi v. Balak Chandra Pandit* (1871), 8 B. L. R. 22; 15 W. R. C. R. 498.

⁸ See *Ohumun Lall v. Gunput Lall (Lalla)* (1871), 16 W. R. C. R. 52.

⁹ *Ramcoomar Mitter v. Ichamoyi Das* (1880), 6 Calo. 36; 6 C. L. R. 429.

are in want. After his death his property is liable for their maintenance.¹

A stepson is not obliged to maintain his stepmother out of his self-acquired property,² but he must maintain her out of family property.

A grandmother and sister (until marriage, and after marriage if destitute³) are also to be maintained out of the property of a Hindu after his death.⁴

A mother does not apparently lose her right to maintenance by unchastity,⁵ except in Bengal.⁶

It is also the right and duty of a Hindu to perform the funeral ceremonies and other ceremonies in commemoration of his father and mother,⁷ grandparents, and great-grandparents.⁸

Duty of heir. An heir is legally bound to provide out of the estate which descends to him maintenance for such persons as the person from whom he inherits was legally or morally bound to support.⁹

"The obligation of an heir to provide out of the estate, which descends to him, maintenance for certain persons whom the ancestor was legally or morally bound to maintain, is a legal as well as a moral obligation, for the estate is inherited subject to the obligation of providing such maintenance."¹⁰

There is a difficulty in determining whether the person claiming maintenance is one whom the late proprietor was morally bound to maintain.¹¹

¹ *Subbarayana v. Subbakka* (1884), 8 Mad. 236; Strange's "Manual," para. 209; Macnaghten's "Hindu Law," vol. ii. pp. 113-115; Sircar's "Vyavastha Darpana," 2nd ed., p. 375; "Manu," chap. viii. para. 389; Strange's "Hindu Law," vol. ii. pp. 83, 90.

² *Daya (Bai) v. Natha Govindlal* (1885), 9 Bom. 279.

³ Strange's "Hindu Law," vol. ii. p. 83. See, however, *Mangal (Bai) v. Rukhmini (Bai)* (1898), 23 Bom. 291.

⁴ Sircar's "Vyavastha Darpana," 2nd ed., p. 370.

⁵ See *Valu v. Ganga* (1882), 7 Bom. 84, at p. 90.

⁶ Sircar's "Vyavastha Darpana," 2nd ed., p. 371, note.

⁷ *Sundarji Damji v. Dahibai* (1904), 29 Bom. 316; 6 Bom. L. R. 1052; *Vrijbhukandas v. Parvati (Bai)* (1907), 32 Bom. 26; 9 Bom. L. R. 1187.

⁸ *Sundarji Damji v. Dahibai* (1904),

29 Bom. 316; 6 Bom. L. R. 1052.

⁹ *Khetramani Dasi v. Kashinath Das* (1868), 2 B. L. R. A. C. 15, at p. 34; 9 W. R. C. R. 413, at p. 422. See *Mokhada Dasse v. Nundo Lall Haldar* (1901), 28 Calo. 278, at p. 288; 5 C. W. N. 297, at p. 300. *Janki v. Nand Ram* (1888), 11 All. 194, at p. 201; *Rujjomoney Dossee v. Shibchunder Mullick* (1864), 2 Hyde, 103. This applies to Khojas, *Rashid Karmali v. Sherbanoo* (1904), 29 Bom. 85.

¹⁰ *Khetramani Dasi v. Kashinath Das* (1868), 2 B. L. R. A. C. 15, at p. 38; 9 W. R. C. R. 413, at p. 422. See *Tarunginee Dossee v. Chowdhry Dwarkanath Muscant* (1873), 20 W. R. C. R. 196.

¹¹ *Kamini Dasse v. Chandra Pole Mundle* (1889), 17 Calo. 373, at p. 377. See Sircar's "Vyavastha Darpana," 2nd ed., p. 370; G. C. Sircar's "Hindu Law," p. 238.

The texts lay down generally that he who inherits a person's property is bound to maintain those whom that person was himself bound to maintain including the persons disqualified from inheritance and those dependent on them.¹

As to when maintenance is a complete charge upon property. see the cases relating to the maintenance of a widow, *ante*, pp. 85-90.

As to the fixing of the amount of maintenance, see *ante*, p. 83.

Guardianship.

A Hindu father is recognized as the legal guardian of all his male, and of his female unmarried, minor legitimate children,² Right of
guardianship. and is as such entitled to the custody of their persons and property.

The adoptive father acquires the same right, even as against the natural father.³

An adult⁴ Hindu father can, by word or writing, nominate a guardian for his children, and he is unrestricted in the choice of such guardian. He may exclude even the mother from the guardianship.⁵ Testamentary
guardian.

Although the right of the father to the guardianship of his children has been recognized by the legislature, it is one which is given to him

¹ *Lakshman Ramchandra v. Sarasvatibai* (1875), 12 Bom. H. C. 69, at p. 77; "Vyavahara Mayukha," chap. iv. s. 4, para. 30; s. 9, para. 22; s. 11, paras. 1, 3, 9, 12; "Mitakshara," chap. ii. s. 1, paras. 7, 12, 13, 20, 21; s. 10, paras. 5, 15. The Rishi texts on the subject are collected in R. C. Mitra's "Law of Joint Property," pp. 66-68.

² *Mokoond Lal Singh v. Nobodip Chunder Singha* (1898), 25 Calc. 881, at p. 884; 2 C. W. N. 379, at p. 381; *In the matter of Prankrishna Surma* (1882), 8 Calo. 969; S. C. *Parameshwari Surma v. Empress*, 11 C. L. R. 6; Macnaghten's "Hindu Law," vol. i. ed. 1829, chap. vii. p. 103; *In matter of Himnauth Bose* (1862), 1 Hyde, 111. See Act VIII. of 1890, s. 19.

³ *Sree Narain Mitter v. Kishen-*

soondery Dussee (Sreemutty) (1893), I. A. Sup., vol. 149, at p. 163; 11 B. L. R. 171, at p. 191; S. C. *Nogendro Chundro Mitro v. Kishensoondery Dossee (Sreemutty)*, 19 W. R. C. 133, at p. 139; *Laksmibhai v. Shirdar Vasudev Takle* (1878), 3 Bom. 1.

⁴ By not incorporating s. 47 of the Indian Succession Act (X. of 1865) in the Hindu Wills Act (XXI. of 1870), the Legislature has apparently indicated its opinion that the privilege enjoyed by adult Hindu fathers should not be extended to fathers who are themselves minors.

⁵ *Pirthee Lal Jha (Sooba)* v. *Doorga Lal Jha (Sooba)* (1867), 7 W. R. C. R. 73, at p. 75. See Act VIII. of 1890, s. 6; *Budhilal Manji v. Murarji Premji* (1907), 31 Bom. 413; 9 Bom. L. R. 553.

for the benefit of his children, and should he at any time show himself unfit to be guardian the Court will place the custody of his children in a more suitable person.¹

Ample provision is made in the Guardians and Wards Act, 1890, for the purpose of protecting the persons and property of infants, and although the Court will have regard to the principle that it is generally for the benefit of infants that they should remain in the custody of their parents, and will also have regard to the personal law of the infant in question, the Courts will, in appointing a guardian, consider only the physical, moral, and religious welfare of the infant.²

Right of
mother.

On the death of the father, or in his absence,³ or in case of his having lost the right of guardianship, and in the absence of a valid appointment by him, the mother is entitled to the guardianship of her minor children.⁴

It has been held that under the Mithila law, the mother is entitled to the guardianship even during the lifetime of the father.⁵

Illegitimate
children.

A mother would ordinarily be entitled to the guardianship of her illegitimate child, and the father would against the mother have no right of guardianship.⁶

Appointment
of guardian by
Court.

A parent is liable to be superseded by the appointment of a guardian under the provisions of the Guardians and Wards Act, 1890, but the Court cannot make such appointment when the father is alive, unless he is unfit to be guardian.⁷

¹ See Act VIII of 1890, s. 19

² See Act VIII. of 1890, s. 17; *Mokoond Lal Singh v. Nobodvp Chunder Singha* (1898), 25 Calc. 881; 2 C. W. N. 379; *Bhukuo Koer (Musst.) v. Chamela Koer (Musst.)* (1897), 2 C. W. N. 191; *Pollard v. Rouse* (1910), 33 Mad. 288; *Tota Ram v. Ram Charan* (1910), 33 All. 222; *Re Gulbas* (1907), 32 Bom. 50.

³ See *Modhoooodun Mookerjee v. Jadub Chunder Banerjee* (1865), 3 W. R. C. R. 194.

⁴ *Pirthee Lal Jha (Soobah) v. Doorga Lal Jha (Soobah)* (1867), 7 W. R. C. R. 73, at p. 75; *Ram Dhun Doss v. Ram Ruttun Dutt* (1868), 10 W. R. C. R. 425, at p. 426; *S. Namasevayam Pillay v. Annamai Ummal* (1869), 4 Mad. H. C. 339, at p. 343; *Kooldeep Narain v. Rajbunsee Kourur* (1847), 7 Ben. Sel. R. 395 (2nd

edition, p. 467); *Kaulesra v. Jora Kasarundan* (1905), 28 All. 233; Macraghten's "Hindu Law," ed. 1829, vol. i. chap. vii. p. 103; and vol. ii. chap. vii. case iv. p. 205.

⁵ *Jussoda Kooer v. Nettya Lal (Lallah)* (1879), 5 Calc. 43. There does not seem to be any other authority to the same effect. In *Pirthee Lal Jha (Soobah) v. Doorga Lal Jha (Soobah)* (1867), 7 W. R. C. R. 74, where the parties were governed by the Mithila school, a testamentary guardian, who was appointed by the father, was preferred to the mother.

⁶ *In the matter of Saithri* (1891), 16 Bom. 307, at p. 317; *Ventamma v. Savitramma* (1898), 12 Mad. 67, at p. 68; *King v. Nagapen* (1814), 2 Mad. N. C. 91

⁷ Act VIII. of 1890, s. 18.

Failing the father and mother, the Hindu law prescribed a succession to the right of guardianship. The elder brother, the elder half-brother, the paternal relations, and failing them the maternal kinsmen were preferred in order of priority ;¹ but their right was not, as in the case of the father or mother, an absolute one.² In appointing a guardian a Court may be guided to some extent by this order of succession,³ but it would not give the same effect to the claims of these relatives as it would to the claim of a father or mother.

As to the guardianship of a female minor after marriage, see *ante*, p. 62.

If the minor is a member of a joint Hindu family, the manager of the family is entitled to the management of the joint property ;⁴ but if the family be a divided one, the mother is, failing the father, entitled to the custody of the minor's property ;⁵ and even if the family be joint, she would apparently be so entitled, so far as the minor's separate property, if any, is concerned. Where the mother is manager of her minor child's property, her position necessarily requires her to seek the advice of her husband's relations,⁶ and she would often strengthen her position by her so doing, but the law cannot compel her to seek, or to act under, their advice, if she wishes to take the whole responsibility upon herself.

A father may lose his right to the guardianship of his children by a persistent course of ill-treatment, by conduct tending to their corruption, or by acting in a way injurious to their morals or interest.⁷ He may lose the right by waiver, as where he has permitted another person to maintain and educate them, and it would be detrimental to their interests to alter the mode of their maintenance in course of their education.⁸

¹ Macnaghten's "Hindu Law," vol. i. pp. 103, 104; Strange's "Hindu Law," vol. i. p. 71.

² *Kristo Kissor Neoghy v. Kadermoye Dossee* (1878), 2 C. L. R. 583. See *Bhikuo Koer (Must.) v. Chamela Koer (Must.)* (1897), 2 C. W. N. 191.

³ See Strange's "Hindu Law," vol. i. p. 71; Act VIII. of 1890, s. 17.

⁴ *Post*, p. 259.

⁵ Sir E. H. East's Notes, Morley's "Digest," vol. ii. p. 50; West and Bühler, 2nd ed., p. 88. In *Motee Singh v. Doolath Singh*, N.-W. P. S. D. A.,

13th April, 1844, it was held that an elder brother, if not separated, could act as guardian.

⁶ Macnaghten's "Hindu Law," ed. 1829, vol. i. chap. vii. p. 103; and see Sir E. H. East's Notes, Morley's "Digest," vol. ii. p. 50.

⁷ See Act VIII. of 1890, s. 19 (b).

⁸ *Mokoond Lal Singh v. Nobodip Chunder Singha* (1898), 25 Calc. 881; 2 C. W. N. 379. In the matter of *Joshi Assam* (1895), 23 Calc. 290. See *Modhoosoodun Mookerjee v. Jadub Chunder Banerjee* (1865), 3 W. R. C. R. 194.

A mother may also for similar reasons lose her right.¹

Change of
religion.

It is submitted that a father or mother does not lose his or her right by a change of religion.²

Loss of caste.

Under the Hindu law loss of caste apparently involved a loss of the right of guardianship of the person and property of minors;³ but since the passing of Act XXI. of 1850, such right of guardianship ceased to be affected by loss of caste.⁴ Where, however, the appointment of a guardian is made by a Court, the fact that the person proposed is out of caste would be a matter for consideration.⁵

Recluse.

Under the Hindu law a father or other guardian might lose his right by permanently emigrating, becoming a recluse or entering a religious order.⁶

Hindu
widows.

Hindu widows do not on remarriage *ipso facto* lose their right of guardianship of their children,⁷ but, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the husband the guardian of his children, the father, or paternal grandfather, or the mother or paternal grandmother, or any male relative, of the husband can apply to the highest Court having original jurisdiction in civil cases in the place where the husband was domiciled at the time of his death for the appointment of a guardian,⁸ and

¹ *Venkamma v. Savitramma* (1888), 12 Mad. 67. *In the matter of Saithri* (1891), 16 Bom. 307.

² Act XXI. of 1850; *Muchoo v. Arzoan Sahoo* (1866), 5 W. R. C. R. 235; *Queen v. Bezongji*, Perry's Oriental Cases, p. 91. It has been doubted whether Act XXI. of 1850 affects guardianship, but the Punjab Chief Court (*In the matter of Gul Mahomed*) has held that a right of guardianship is a right within the meaning of Act XXI. of 1850. See *Kanahi Ram v. Biddya Ram* (1878), 1 All. 549; *Kaulesra v. Jorai Ka-saundhan* (1905), 28 All. 233; *Shamsing v. Santabai* (1901), 25 Bom. 551, at p. 555; 3 Bom. L. R. 89; *Putlabai v. Mahadu* (1908), 33 Bom. 107; 10 Bom. L. R. 1134.

³ See Strange's "Hindu Law," vol. i. p. 160.

⁴ *Muchoo v. Arzoan Sahoo* (1866), 5 W. R. C. R. 235, above, note 2; *Kanahi Ram v. Biddya Ram* (1878),

1 All. 549; *Kaulesra v. Jorai Ka-saundhan* (1905), 28 All. 233.

⁵ *Fuggoo Daye v. Ranah Daye* (1865), 4 W. R. M. A. 3.

⁶ See *In the matter of Ishwar Chunder Surma*, Ben. S. D. A. 1850, p. 471. Strange's "Hindu Law," vol. i. p. 185; Sutherland's "Synopsis of the Law of Adoption," 2nd head.

⁷ *Ganga Pershad Sahu v. Jhalo* (1911), 38 Calc. 862; 15 C. W. N. 579. Act XV. of 1856, s. 5. This Act has been declared to be in force throughout British India, except as regards the Scheduled Districts (Act XV. of 1874, s. 3), and in the Santhal Pargunnahs (Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886). As to the Scheduled Districts to which it has been applied, see General Acts, 1854-66, ed. 1887, p. 107.

⁸ Act XV. of 1856, s. 3. The application may be made under that Act, or under the Guardians and Wards Act (VIII. of 1890). In the

the Court may, if it should think fit, appoint such guardian who, when appointed, shall be entitled to have the care and custody of such children during their minority in the place of their mother, and in making such appointment the Court must be guided, as far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother.¹

When the children have not property of their own sufficient for their support and proper education whilst minors, the appointment can only be made with the consent of the mother, unless the proposed guardian gives security for the support and proper education of the children whilst minors.²

A father or other person entitled to the custody of an infant can recover Remedies. such custody by suit.³

When the child is within the limits of the ordinary original civil jurisdiction of the High Courts of Bengal, Madras, and Bombay, he can apply for relief under sec. 491 of the Code of Criminal Procedure.⁴

Sec. 25 of the Guardians and Wards Act, 1890,⁵ gives the District Courts power to arrest a ward and deliver him into the custody of his guardian.

Where the child is confined under such circumstances that the confinement amounts to an offence, sec. 100 of the Criminal Procedure Code⁶ is applicable, and sec. 552 of the same code deals with the case of a female child under fourteen years of age, who has been detained for an unlawful purpose.

The powers of a guardian (*de facto* or *de jure*) to alienate the property of his ward are the same as those of a manager of a joint family acting for a minor coparcener, see *post*, pp. 273 *et seq.*

latter case the conditions necessary for an application under Act VIII. of 1890 would apply. Act XV. of 1856 has in this matter no application to women who, by the rules of their caste, are capable of contracting a second valid marriage. In *Kishen v. Enayet Hossain*, S. D. A. N.-W. P., 25th June, 1861, it was held that a woman of the Aheer caste does not by remarriage forfeit her rights to act as guardian of her son by her first marriage.

¹ Act XV. of 1856, s. 3. See *Khus-hali v. Rani*, 4 All. 195.

² Act XV. of 1856, s. 3.

³ *Sharifa v. Mune Khan* (1901), 25 Bom. 574; 2 Bom. L. R. 617; *Balmakund v. Janki* (1881), 3 All. 403. See, however, *Sham Lal v. Bindo* (1904), 26 All. 594. The guardian would bring the suit in his own name. For recent examples of suits of this kind, see *Krishna v. Reade* (1885), 9 Mad. 391; *S. C. Reade v. Krishna* (1886), 9 Mad. 391; *Venkamma v. Savitramma* (1888), 12 Mad. 67; *Abasi v. Dunne* (1878), 1 All. 598.

⁴ Act V. of 1898.

⁵ Act VIII. of 1890.

⁶ Act V. of 1898.

CHAPTER VI.

THE JOINT FAMILY AND ITS PROPERTY.

Of what the family consists.

AMONG Hindus a family is not ordinarily composed only of parents and their unmarried children, although that type of family is sometimes to be found. The family would generally be composed of a man, his wife, or wives, his unmarried children, his married sons and their wives and children, and, in cases where they are not maintained by their husband's family, his widowed daughters.¹

A family of this type, although in many respects complete in itself, may be a component part of a larger family. This larger family consists of all the descendants in the male line from a common ancestor, and their wives, sons, and unmarried daughters,²

Whether the family be of the larger or smaller type, the members would ordinarily live together, being maintained from the common purse, and performing jointly the ceremonies required by their religion.

A family so living together is called by English lawyers a joint Hindu family, and in its ordinary condition the members of it are said to be joint in food, worship, and estate.

Rights of members.

The rights of the individual members in the property belonging to the family vary, in accordance with the school of law to which the family belongs.³

If the family be governed by the Bengal school of law, sons have no rights in the ancestral property during the lifetime of their father, and such property is completely at his disposal. On his death intestate they acquire rights by inheritance.

The case of a family governed by the Mitakshara school of law is different. Within certain limits a son acquires by birth

¹ See *ante*, p. 201, and *post*, pp. 227, 260.

² See Intro. to "Study of Hindu-

ism," by Ġuru Prosad Sen, pp. 87-90.

³ See *ante*, pp. 17, 18.

rights in the ancestral property, and can assert such rights even against his own father.

According to the Mitakshara school of law, "The conception of a Hindu family is a common male ancestor with his lineal descendants in the male line, and so long as that family is in its normal condition, viz. the undivided state, it forms a corporate body,"¹ or unit,² in the sense of having a continuous existence notwithstanding the death of individual members.³

Joint family according to the Mitakshara.

"Such corporate body, with its heritage, is purely a creation of law and cannot be created by act of parties, save in so far that by adoption a stranger may be affiliated as a member of that corporate family.

"According to the above conception of a family there may, of course, be one or more families all with one common ancestor, and each of the branches of that family with a separate common ancestor."⁴

"So long as a family remains an undivided unit, two or more members thereof—whether they be members of different branches or of one and the same branch of the family—can have no legal existence as a separate independent unit; but if they comprise all the members of a branch, or of a sub-branch, they can form a distinct and separate corporate unit within the larger corporate unit and hold property as such. Such property may be the 'self-acquisition' or 'obstructed heritage'⁵ of a paternal ancestor of that branch as distinguished from the other branches, which property has come to that branch and to that branch alone as 'unobstructed heritage,' or it may be the self-acquisition of one or more individual members of that branch, which by act of parties has been impressed with the character of joint property,⁶ owned by that branch and that branch alone, to the exclusion of the other branches."⁷

The joint family may be broken up by the separation of individual members from the corporate body, or by the partition of the rights of all the members. On such separation or partition, the separating or dividing members form new families, to which the joint family system applies.⁸

Disintegration of family.

The joint family may also come to an end by the death of

¹ *Sudarsanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at p. 154; *Gan Savant Bal Savant v. Narayan Dhond Savant* (1883), 7 Bom. 487, at p. 471.

² *Ram Narain Singh (Rajah) v. Pertum Singh* (1873), 11 B. L. R. 397, at p. 404; 20 W. R. C. R. 189, at p. 191.

³ It is not a corporation in the sense of being a legal person; *Sokkanadha Vannimundar v. Sokkanadha*

Vannimundar (1904), 28 Mad. 344, at p. 345.

⁴ *Sudarsanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at p. 154.

⁵ *Post*, p. 244.

⁶ *Post*, p. 236.

⁷ *Sudarsanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at p. 155.

⁸ *Bata Krishna Naik v. Chintamani Naik* (1885), 12 Calc. 262.

the last surviving coparcener, in which case, in default of his disposing of the property, his heir takes by inheritance.

"By the nature of the case the joint family must commence, and also must end, when it does end, in an individual who holds the property in a separate condition. If this individual dies without becoming the root of a joint family, the Mitakshara law gives an *interim* enjoyment of the property to his female representatives, when there are any, and then transfers it to a collateral heir as the origin of a new joint family."¹

The joint family system undoubtedly owes its origin to the patriarchal system. As time advanced the exclusive rights of the father became modified in favour of the sons, who asserted rights to an interest in the property, but continued to live together with unity of possession of the family property.

As to the origin of the joint family system, and as to the similarities between it, and other ancient systems of law, see Sir Henry Maine's "Ancient Law," pp. 123-161; Mayne's "Hindu Law," 7th ed., chap. vii.; Krishna Kamal Bhattacharya's "Law Relating to the Joint Hindu Family," Lectures I. and II.; Jogendranath Bhattacharya's "Commentaries on the Hindu Law," 2nd ed., pp. 216-218.

Burden of proof as to family or property being joint.

In a suit which involves a question as to whether a family was joint or separate, or whether a particular property belonged to a joint family, or was the separate acquisition of an individual member of the family,² the burden of proof would depend upon the allegations in the pleadings or at the hearing, and would, as in other cases, lie on the person who would fail if no evidence at all were given on either side.³

This burden of proof would be shifted by the following presumptions:—

Presumption of union.

Every Hindu family is presumed to be joint in food, worship, and estate. The property belonging to the family is presumed to be joint and undivided, the burden of proving a separation being upon the person alleging it.⁴

¹ *Ram Narain Singh (Rajah) v. Pertum Singh* (1873), 11 B. L. R. 397; at p. 404; 20 W. R. C. R. 189, at p. 192. See *Saminadha Pillai v. Thangathanni* (1895), 19 Mad. 70; *Jasoda Koer v. Sheo Pershad Singh* (1889), 17 Calc. 33, at p. 36. See *post*, p. 233.

² See *post*, pp. 244-248.

³ Indian Evidence Act (I. of 1872), s. 102. See *Bholanath Mahta v. Ajoodhia Persad Sookul* (1873), 12 B. L. R. 336; 20 W. R. C. R. 65.

⁴ *Rewun Persad v. Radha Beeby (Mussumat)* (1846), 4 M. I. A. 137, at p. 168; *Naragunty Lutchmeedavamah v. Vengama Naidoo* (1861), 9 M. I. A. 66, at p. 92; 1 W. R. P. C. 30, at p. 32; *Neelkisto Deb Burmono v. Beerchunder Thakoor* (1869), 12 M. I. A. 523, at p. 540; 3 B. L. R. P. C. 13, at p. 17; 12 W. R. P. C. 21, at p. 23; *Cheetha (Mussumut) v. Miheen Lall (Baboo)* (1867), 11 M. I. A. 369; *Prit Koer v. Mahadeo Pershad Singh* (1894), 21 I. A. 134,

As to the presumption with regard to property in the name of a coparcener, see *post*, pp. 247, 248.

This presumption is merely a presumption as to the continuance of a juridical relationship¹ combined with a presumption as to the ordinary practice of Hindu families.² It applies as much to the case of a father and son, governed by the Mitakshara law, as to the case of brothers and other coparceners.³ It takes the place of evidence, and may be displaced by evidence of a state of things inconsistent with such presumption.⁴

It is not necessary, for the preservation of the joint nature of family property, that the members of the family should live in commensality; they may dwell and mess apart, and yet remain joint in property.⁵

The presumption that the family is joint would be weakened, if not rebutted, by evidence of separate trading, funds, and property, and independent dealing with such property,⁶ although the family may have been joint in food.⁷

Separation in dwelling and food.

Separate dealings.

at p. 135; 22 Cal. 85, at p. 89; *Bhugobutty Misra* v. *Domun Misra* (1875), 24 W. R. C. R. 365; *Taruck Chund* v. *Poddar* v. *Jodeshur Chunder Koondoo* (1873), 11 B. L. R. 193; 19 W. R. C. R. 178; *Shib Pershad Chuckerbutty* v. *Gunga Monee Debee* (1871), 16 W. R. C. R. 291; *Cassumbhoy Ahmedbhoy* v. *Ahmedbhoy Hubibhoy* (1887), 12 Bom. 280, at p. 309; *Bilash Koonwar* (Mussamut) v. *Bhawanees Buksh Narain* (Baboo), W. R. 1864, C. R. 1; *Bissumbhur Sircar* v. *Soorodhony Dossee* (1865), 3 W. R. C. R. 21; *Treelochun Roy* v. *Rajkishen Roy* (1866), 5 W. R. C. R. 214; *Beer Narain Sircar* v. *Teen Cowree Nundee* (1864), 1 W. R. C. R. 318.

¹ Cf. Indian Evidence Act (I. of 1872), ss. 109, 114, illustration (d).

² Indian Evidence Act (I. of 1872), s. 114.

³ *Kallianji* v. *Bezoni* (1908), 32 Bom. 512; 10 Bom. L. R. 754.

⁴ See *Bholanath Mahta* v. *Ajoodhia Persad Sookul* (1873), 12 B. L. R. 336; 20 W. R. C. R. 65.

⁵ *Ganesh Dutt Thakoor* (Chowdhry) v. *Jewach Thakoorain* (Mussummat) (1903), 31 I. A. 10; 31 Cal. 262; 8 C. W. N. 146; 6 Bom. L. R. 1; *Rewun Persad* v. *Radha Beeby* (Mussummat) (1846) 4 M. I. A. 137, at p. 168;

7 W. R. P. C. 35, at p. 37; *Nursingh Das* (Rai) v. *Narain Das* (Rai) 1871, 3 N. W. P. 217, at p. 235; *Banee Madhub Mookerjee* v. *Bhuggobutty Churn Banerjee* (1867), 8 W. R. C. R. 270; *Hurish Chunder Mookerjee* v. *Mokhoda Debia* (1872), 17 W. R. C. R. 564; *Sherajooddeen Ahmed* (Shaikh) v. *Horai Singh* (1876), 25 W. R. C. R. 116; *Parbutty Coomur* v. *Sudabut Persad* (1865), 2 Hay, 315; *Gour Lall Singh* v. *Mohesh Narain Ghose* (1870), 14 W. R. C. R. 484; *Pearee Monee Bibee* v. *Madhub Singh* (1871), 15 W. R. C. R. 93; *Belas Koer* (Mussamut) v. *Bhowanees Buksh* (Baboo) (1863), Marsh, 641; *Vurdyengar* v. *Alagasingyengar* (1807). Strange's "Hindu Law," vol. ii. p. 371.

⁶ *Bodh Sing Doodhooria* v. *Gunesh Chunder Sen* (1873), 12 B. L. R. 317; 19 W. R. C. R. 356. See *Murari Vithoji* v. *Mukund Shivaji Naik Golatkar* (1890), 15 Bom. 201; *Makhun Lall Dutt* v. *Ram Lall Shaw* (1898), 3 C. W. N. 134; *Peary Lall* v. *Bhawoot Koer* (1862), W. R. Sp. No. 18; *Uday Chand Biswas* v. *Panchoo Ram Biswas* (1882), 11 C. L. R. 514.

⁷ See *Bodh Sing Doodhooria* v. *Gunesh Chunder Sen* (1878), 12 B. L. R. 317, at p. 326; 19 W. R. C. R. 356, at p. 357; *Gajindar Narain* (Rai)

Some holdings in severalty. The circumstance that certain parcels are held in severalty does not rebut the presumption as regards the rest of the joint estate.¹

Disruption of unity. Where it is admitted or proved that a disruption of the unity of the joint family has taken place, this presumption has no application.²

When one coparcener separates from the others there is no presumption that the remaining members continue united. In that case an agreement to remain united or to reunite must be proved like any other fact :³ but where a share is allotted to more than one person the presumption will be that such persons remain joint.⁴

No presumption as to time of separation. When it is admitted or proved that the members of the family were not in a complete state of union at the time of the institution of the suit, there is no presumption as to the family being joint at a particular time,⁵ or as to when the separation took place, but it lies upon the plaintiff to prove such a case as would entitle him to the relief which he seeks.⁶

When partial partition is admitted or proved the presumption is that there has been an entire partition both with reference to interest and properties.⁷

There is authority under the Bengal school of law that when one coparcener separates from the others who remain joint, such others are to be treated as reunited,⁸ but it is submitted that such separation in no way affects the status *inter se* of the coparceners who remain joint.⁹

Strength of presumption. "The strength of the presumption necessarily varies in every case. The presumption of union is stronger in the case

v. Harihar Narain (Rai) (1908), 12 C. W. N. 687.

¹ *Sreeram Ghose v. Sreenath Dutt Chowdhry* (1867), 7 W. R. C. R. 451.

² *Radha Churn Dass v. Kripa Sindhu Dass* (1879), 5 Calc. 474; 4 C. L. R. 428; *Bannoo v. Kashee Ram* (1877), 3 Calc. 315; *Vaidyanatha Aiyar v. Aiyasamy Aiyar* (1908), 32 Mad. 191; *Badul Singh v. Chutterdharee Singh* (1868), 9 W. R. C. R. 558; *Somungowda v. Bhurmungowda* (1863), 1 Bom. H. C. 43.

³ *Balabuz Ladhuram v. Rukhmabai* (1903), 30 I. A. 130; 30 Calc. 725; 7 C. W. N. 642; 5 Bom. L. R. 469; *Radha Churn Dass v. Kripa Sindhu Dass* (1879), 5 Calc. 474; 4 C. L. R. 428. See, however, *Upendranarain Myti v. Gopeenath Bera* (1883), 9 Calc. 817; 12 C. L. R. 356. It was held in *Ranganatha Rao v. Narayanasami Naicker* (1900), 31 Mad. 482, that there is no presumption of a general

division among all the members of a coparcenary from the fact that one of its members has separated.

⁴ See *Durga Dei v. Balmakund* (1906), 29 All. 93.

⁵ *Obhoy Churn Ghose v. Gobind Chunder Dey* (1882), 9 Calc. 237, at p. 243.

⁶ *Ram Ghulam Singh v. Ram Behari Singh* (1895), 18 All. 90.

⁷ *Vaidyanatha Aiyar v. Aiyasami Aiyar* (1908), 32 Mad. 191, at p. 195; *Anandibai v. Harisuba Pai* (1911), 35 Bom. 293, see *post*, p. 329.

⁸ *Jaudub Chunder Ghose v. Benod-beharry Ghose* (1862), 1 Hyde, 214; *Petambur Dutt v. Hurish Chunder Dutt* (1871), 15 W. R. C. R. 200. See *Kesabram Mahapatrar v. Nandkishor Mahapatrar* (1869), 3 B. L. R. A. C. 7. As to reunion, see *post*, pp. 343, 344.

⁹ See *Upendranarain Myti v. Gopeenath Bera* (1883), 9 Calc. 817; 12 C. L. R. 356; *Sudarsanam Maistri*

of brothers than in the case of cousins, and the farther you go from the founder of the family, the presumption becomes weaker and weaker."¹

In practice a family does not continue joint for many generations. It has been said² that "in no case . . . will it be found that the diluted degree of blood relationship amongst the members of the complex family group extends beyond the fourth degree." Another writer says, "I doubt whether at this day there is a single undivided Hindu family throughout India, in which persons related to one another by a common ancestor beyond the seventh degree are to be found living together, or holding property in common."³ The seventh degree seems always to have been the limit.⁴

The presumption as to union applies to new families formed from the separation of members of an old family.⁵ New families.

The property belonging to a joint family is hereinafter called the coparcenary property. Coparcenary property.

The expression used in the Mitakshara is translated as "ancestral property,"⁶ i.e. property transmitted in the direct male line from a common ancestor; but having regard to the fact that under the decisions⁷ all property held by the members of a Mitakshara family, as such, is ordinarily coparcenary property, and that in every case it cannot properly be described as "ancestral," it is, I think, more convenient to use the term "coparcenary."

WHO ARE COPARCENERS.

Under the Bengal school the coparceners consist of the persons, whether male or female, entitled to shares in the coparcenary property by inheritance, transfer, or a will, or by virtue of some other mode of acquisition.⁸ These shares are defined.⁹ Coparceners according to the Bengal school.

v. *Narasimhulu Maistri* (1901), 25 Mad. 149, at pp. 156, 157. *Post*, p. 329.

¹ *Moro Vishvanath v. Ganesh Vitthal* (1873), 10 Bom. H. C. 444, at p. 468. Mr. Ellis' remarks, *Strange's "Hindu Law,"* ii. 347.

² Introduction to "Study of Hinduism," by G. P. Sen, p. 89.

³ K. K. Bhattacharya's "Law Relating to the Joint Hindu Family," p. 137.

⁴ *Ibid.*, pp. 136-138.

⁵ *Bata Krishna Naik v. Chintamani Naik* (1885), 12 Calc. 262,

⁶ *Pitrarjit*, as distinguished from *Swarjit*, self-acquired.

⁷ *Post*, pp. 230, 231. See *Karsondas Dharamsey v. Gangabai* (1908), 32 Bom. 479; 10 Bom. L. R. 184.

⁸ As for instance when the property has been acquired by the joint exertions of the members of the family.

⁹ *Soorjeemoney Dossee (Sreemutty) v. Denobundoo Mullick* (1857), 6 M. I. A. 526, at p. 553; 4 W. R. P. C. 114, at p. 115; *Rajkishore Lahoory v. Gobind Chunder Lahoory* (1875), 1 Calc. 27; 24 W. R. C. R.

There is under that school no right of survivorship. On the death of a coparcener his share passes by inheritance or by will. A son, therefore, cannot as such,¹ as under the Mitakshara law, be a coparcener with his father.²

Power of
disposition.

Under the Bengal school of law a Hindu may, without any restriction, dispose of his property³ (although it may be an undivided share),⁴ whether ancestral or self-acquired, by sale, mortgage, gift, or will, whether in favour of strangers or in favour of some of his own issue or relations, to the exclusion of others.⁵

This applies also to property,⁶ the succession to which is governed by the law of primogeniture.⁷

The sons do not acquire any right in their father's property except under his will or as his heirs.⁸

In *Soorjeempney Dossee (Sreemutty) v. Denobundhoo Mullick* (1857),⁹ the Supreme Court of Bengal laid down the following propositions with regard to joint property governed by the Bengal school of law:—

1. "Each of the co-sharers has a right to call for a partition,¹⁰ but until such partition takes place . . . the whole remains common stock; the co-sharers being equally interested in every part of it.

2. "On the death of an original co-sharer his heirs stand in his place and succeed to his rights as they stood at his death; his rights may also, in his lifetime, pass to strangers, either by alienation, or, as in the case of creditors, by operation of law;¹¹ . . . but in all cases those who come in, in the place of the original co-sharer, by inheritance, assignment, or

234; 4 I. A. 153; see *Sheo Soondary v. Pirthee Singh* (1877), 4 I. A. 147.

¹ There might be a case of a son taking by a transfer or a will a share in property in which his father is also a sharer.

² See *Bejoy Krishna Ghosh v. Ashutosh Ghosh* (1908), 13 C.W. N. 396.

³ The property is not coparcenary property, but is on the same footing as self-acquired property.

⁴ *Post*, p. 286.

⁵ *Ramkishore Acharj Chowdree v. Bhoobunmoyee Debea Chowdrain*, Ben. S. D. A. 1859, p. 229, at pp. 250. 251; *Bhoobunmoyee Debea Chowdrain v. Ramkishore Acharj Chowdree* Ben. S. D. A. 1860, p. 485, at p. 489; *Kumla Kaunt Chukerbutty v. Gooroo Govind Chowdree* (1829), 4 Ben. Sel. R. 322 (2nd ed. 410). Certificate of judges of Bengal Sudder Dewanny

Adawlut, set out in 6 Ben. Sel. R. at p. 73 (2nd ed., p. 85). *Tarnee Churn v. Dasee Dasee (Mussummaut)* (1824), 3 Ben. Sel. R. 397 (2nd ed., p. 530); *Debendra Coomar Roy Chowdhry v. Brojendra Coomar Roy Chowdhry* (1890), 17 Calc. 886; *Shamachurn Sircar's "Vyavastha Darpana,"* 2nd ed., 552 *et seq.*

⁶ *Uddoy Additya Deb v. Jadubal Aditya Deb* (1879), 5 Calc. 113; 4 C. L. R. 181; S. C. on appeal (1881), 8 I. A. 248; 8 Calc. 199. *Narain Khooria v. Loknath Khooria* (1881), 7 Calc. 461 9 C. L. R. 243.

⁷ *Post*, p. 254.

⁸ See *Dharmadas Kundu v. Amulya Dhan Kundu* (1906), 10 C. W. N. 765.

⁹ 6 M. I. A. 526, at p. 539.

¹⁰ "Dayabhaga," chap. iii. s. 1, para. 16.

¹¹ *Post*, pp. 286, 278.

operation of law, can take only his rights as they stand, including, of course, the right to call for a partition.

3. "Whatever increment is made to the common stock, whilst the estate continues joint, falls into and becomes part of that stock."

Under the Mitakshara law a Hindu acquires by birth or adoption a vested interest in all coparcenary property ¹ (whether ancestral or not,² and whether acquired before or after his birth³ or adoption,⁴ as the case may be), held by his father, or father's father, or father's father's father as members of a joint family⁵ even during their lifetime.⁵

Those persons who by birth or adoption so acquire an interest in the coparcenary property are coparceners.⁶ A person can also become a coparcener by the death of an ancestor, whose existence excludes him from the coparcenership.⁷

All the coparceners are male descendants in the male line of the acquirer of the property.⁸

The interest that a son acquires is equal to that of his father. He does not acquire his title through his father, but

¹ He does not by birth acquire an interest in a mere right of suit, or in an equitable right to procure an alteration in a grant. *Ujagur Singh (Chaudhri) v. Pitam Singh (Chaudhri)* (1881), 8 I. A. 190; 4 All. 120. He acquires an interest in debutter property; *Ram Chandra Panda v. Ram Krishna Mahapatra* (1906), 33 Calc. 507.

² *Karsondas Dharamsey v. Gungabai* (1908), 32 Bom. 479; 10 Bom. L. R. 184, see, however, *Jamna Prasad v. Ram Pratap* (1907), 29 All. 667.

³ *Ramanna v. Venkata* (1888), 11 Mad. 246; *Jugmohandas Mangaldas v. Sir Mangaldas Nathubhoy* (1886), 10 Bom. 528, at p. 581; *Isree Pershad Singh v. Nasib Koor* (1884), 10 Calc. 1017, at p. 1021; *contra* per Mitter, J., *Gunga Prasad v. Ajudhia Pershad* (1881), 8 Calc. 131, at p. 134; *S. C. Gunga Pershad v. Sheodyal Singh*, 9 C. L. R. 417, at p. 420.

⁴ *Sudanund Mohapatrur v. Soorjo Monee Dayee* (1869), 11 W. R. C. R. 436.

⁵ *Suraj Bansi Koer v. Sheo Prasad Singh* (1879), 6 I. A. 88, at pp. 99, 100; 5 Calc. 148, at p. 164; 4

C. L. R. 226, at p. 232; *Raja Ram Tewary v. Luchmun Persad* (1867), B. L. R. Sup. Vol. 731; 8 W. R. C. R. 15; 2 Ind. Jur. N. S. 216; *Sudarshanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at p. 155; *Karuppai Nachiar v. Sankaranaryana Chetty* (1903), 27 Mad. 300, at p. 313; *Subbayya v. Surayya* (1887), 10 Mad. 251, at p. 254; *Sartaj Kuari (Rani) v. Deoraj Kuari (Rani)* (1888), 15 I. A. 51, at p. 61; 10 All. 272, at pp. 284, 285; *Ram Narain Singh (Rajah) v. Pertum Singh* (1873), 11 B. L. R. 397, at pp. 401, 402; 20 W. R. 189, at p. 190; *Goor Surun Doss v. Ram Surun Bhukut* (1866), 5 W. R. C. R. 54; *Sudanund Mohapatrur v. Soorjo Monee Dayee* (1869), 11 W. R. C. R. 436.

⁶ They have, individually, no proprietary right until partition, which is treated by the Mitakshara as one of the sources of such right. See *Chuskun Lall Singh v. Poran Chunder Singh* (1868), 9 W. R. C. R. 483.

⁷ *Post*, p. 220.

⁸ Bhattacharya's "Hindu Law," 2nd ed., p. 323.

Coparceners according to the Mitakshara.

separately and independently of his father.¹ He has no independent dominion over the property.²

The distance in degree from the founder of the family does not affect the right of coparcenership,³ but the coparceners are limited to the head of each stock, and his sons, grandsons, and great-grandsons.⁴

Thus the body of coparceners cannot include any individual together with a male descendant of his other than his son, grandson, or great-grandson, or, in other words, no man can be a coparcener if his great-great-grandfather is also a coparcener.

If either his father, grandfather, or great-grandfather survive his great-great-grandfather, then he steps into the coparcenary on the death of the great-great-grandfather. If they all predecease his great-great-grandfather he does not take, but the interest survives to the collaterals, if any. If there is no coparcener, then the heir of the great-great-grandfather takes by inheritance.

In *Moro Vishvanath v. Ganesh Vitthal*⁵ (1873), Nanabhai Haridas, J., said, "The rule which I deduce from the authorities on the subject is not that a partition cannot be demanded by one more than four degrees removed from the acquirer or original owner of the property sought to be divided, but that it cannot be demanded by one more than four degrees removed from the last owner, however remote he may be from the original owner thereof."

This is the only case in which a male member of a Mitakshara family who is free from defects which operate as grounds for exclusion from partition,⁶ is not a coparcener. As he is not a *sapinda* of his great-great-grandfather, he does not on his death, in that case, become a coparcener.

An illegitimate son of a member of one of the three regenerate classes acquires no rights as coparcener in coparcenary property.⁷

According to the Mitakshara school, an illegitimate son of

Illegitimate
son.

¹ *Sundar Lal v. Chhitar Mal* (1906), 29 All. 1.

² *Baldeo Das v. Sham Lal* (1875), 1 All. 77; *Beer Kishore Suhje Singh (Baboo) v. Hur Bullub Narain Singh (Baboo)* (1867), 7 W. R. C. R. 502.

³ *Moro Vishvanath v. Ganesh Vitthal* (1873), 10 Bom. H. C. 444; *Yenumala Gavuridevamma Garu (Sri Rajah) v. Yenumala Ramandora Garu (Sri Rajah)* (1870), 6 Mad. H. C. 93; *Girvurdharee Sing (Baboo) v. Kulahul Sing* (1825), 4 Ben. Sel. R. 9 (new edition, 12).

⁴ See *Moro Vishvanath v. Ganesh Vitthal* (1873), 10 Bom. H. C. 444, at

p. 449; Bhattacharya's "Hindu Law," 2nd ed., p. 323.

⁵ 10 Bom. H. C. Rep. 444, at p. 465. As to the application of this principle to an impartible estate, see *Yenumala Gavuridevamma Garu (Sri Rajah) v. Yenumala Ramandora Garu (Sri Rajah)* (1870), 6 Mad. H. C. 93.

⁶ Post, pp. 222, 223.

⁷ *Roshan Singh v. Balwant Singh* (1899), 27 I. A. 51, at p. 56; 22 All. 191, at p. 197; 2 Bom. L. R. 529; *Run Murdun Syn (Chhotarya) v. Sahub Purhulad Syn* (1857), 7 M. I. A. 18; 4 W. R. P. C. 132. As to his right of maintenance, see *ante*, pp. 202, 203.

a Sudra can inherit¹ and be a coparcener, if he be not the result of adulterous² or incestuous intercourse.³

An illegitimate son does not acquire an interest by birth, and therefore cannot claim partition against his father, or dispute his father's dealings with the coparcenary property,⁴ but his father can permit him to have a share of the coparcenary property,⁵ equal to that of a legitimate son.⁶

On the death of his father he becomes a coparcener with the legitimate sons, and on their deaths takes by survivorship.⁷

He can bring a suit against them for partition,⁸ and his sons are entitled to share with the sons of legitimate sons.⁹

In case of a partition between the illegitimate sons and legitimate sons, the former is entitled only to half a share of one of the latter.¹⁰

As he does not represent his father he has no right as against the undivided brothers of his father or against the sons of such brother.¹¹

He is thus only by right a coparcener when there are legitimate sons, and the father has died separated from his brothers.¹²

An illegitimate son who cannot inherit, or be a coparcener, is entitled

¹ *Rahi v. Govinda Valad Teja* (1875), 1 Bom. 97; *Sadu v. Baiza* (1878), 4 Bom. 37; *Sarasuti v. Mannu* (1879), 2 All. 134; *Hargobind Kuari v. Dharam Singh* (1884), 6 All. 320; *Krishnayyan v. Muttusami* (1883), 7 Mad. 407; *N. Krishnamma v. N. Papa* (1869), 4 Mad. H. C. 234; *Brindavana v. Radhamani* (1888), 12 Mad. 72, at p. 86. See *Inderun Valungypooly Taver v. Ramasawmy Pandia Talaver* (1869), 13 M. I. 141, at p. 159; 3 B. L. R. P. C. 1, at p. 4; 12 W. R. P. C. 41, at p. 43; "Manu," chap. ix. para. 179; "Yajnavalkya," chap. ii. para. 135.

² *Rahi v. Govinda Valad Teja* (1875), 1 Bom. 97; *Vencatachella Chetty v. Parvatham* (1875), 8 Mad. H. C. 134; *Dalip v. Ganpat* (1886), 8 All. 387.

³ *Datti Parisi Nayudu v. Datti Bangaru Nayudu* (1869), 4 Mad. H. C. 204.

⁴ *Ram Saran Garain v. Tekchand Garain* (1900), 28 Calc. 194.

⁵ *Ram Saran Garain v. Tekchand Garain* (1900), 28 Calc. 194, at p. 203; "Mitakshara," chap. i. s. 12; "Vyavahara Mayukha," chap. iv. s. 4, para. 32; Colebrooke's "Digest,"

vol. iii. p. 143.

⁶ *Karuppannan Chetti v. Bulokam Chetti* (1899), 23 Mad. 18.

⁷ *Jogendra Bhupati Hurri Chundun Mahapatra (Raja) v. Nityanund Mansingh* (1890), 17 I. A. 128; 18 Calc. 151. S. C. in Court below (1885), 11 Calc. 702; *Sadu v. Baiza* (1878), 4 Bom. 37, at pp. 44, 45.

⁸ *Thangam Pillai v. Suppa Pillai* (1888), 12 Mad. 401.

⁹ *Fakirappa v. Fakirappa* (1902), 4 Bom. L. R. 809.

¹⁰ *Parvathi v. Thirumalai* (1887), 10 Mad. 334, at p. 344; *Chellammal v. Ranganatham Pillai* (1910), 34 Mad. 277; *Vencataram v. Vencata Lutchemee Ummal* (1817), 2 Str. N. C. 127, at p. 137; "Mitakshara," chap. i. s. 11; "Mayukha," chap. iv. s. 4, para. 32; Colebrooke's "Digest," vol. iii. p. 143.

¹¹ *Krishnayyan v. Muttusami* (1883), 7 Mad. 407; *Ranoji v. Kandoji* (1885), 8 Mad. 557; *Parvathi v. Thirumalai* (1887), 10 Mad. 334, at p. 346; *Gopalasami Chetti v. Arunachelam Chetti* (1903), 27 Mad. 32.

¹² See *Ramalinga Muppan v. Pavadai Goundan* (1901), 25 Mad. 519, at pp. 521, 522.

to maintenance out of the property in which his father was a coparcener.¹ This right can be enforced against impartible property.²

As to his right of inheritance, see *post*, pp. 366-368.

Under the Mitakshara law, a woman cannot become a coparcener³ with male coparceners.⁴

There is nothing to prevent a female member of the family acquiring a right by adverse possession.⁵

Exclusion
from copar-
cenership.

Under all the schools of law, those who by Hindu law are incapacitated by physical infirmity from inheriting, are also incapacitated from taking as coparceners, or from taking a share on a partition, but if they would otherwise be coparceners they are entitled to maintenance⁶ for themselves and for the persons whom they are legally or morally bound to support,⁷ and on a partition of the coparcenary property provision should be made for such maintenance.

As to the grounds of exclusion from inheritance, see *post*, pp. 354-356.

A physical defect, which although not congenital excludes from inheritance, will if it develops before separation or partition exclude from the coparcenery.

This is the view taken by the Bengal High Court,⁸ and is based upon the Mitakshara.⁹ The Allahabad High Court has taken a contrary view,¹⁰ on the ground that the right vests on birth. It bases its decision upon a case of inheritance,¹¹ which stands upon a different footing. It is, it is submitted, clear that the view of the former Court is correct.

An excluded person who is cured of his malady after partition is apparently entitled to a share.¹²

¹ "Dayabhaga," chap. ix. para. 28; "Mitakshara," chap. i. s. 12, para. 3. See *ante*, p. 202.

² *Run Murdun Syn (Chuoturya) v. Sahub Purhulad Syn* (1857), 7 M. I. A. 18; 4 W. R. P. C. 132; *Muttusawmy Jagaveera Yettappa Naicker v. Venkataswara Yettaya* (1868), 12 M. I. A. 203; 2 B. L. R. (P. C.) 15; 11 W. R. P. C. 6, *ante*, p. 202.

³ *Punna Bibee v. Radhakissen Das* (1903), 31 Calc. 476.

⁴ See *post*, pp. 312, 313.

⁵ *Sham Koer v. Dah Koer* (1902), 29 I. A. 132; 29 Calc. 664; 6 C. W. N. 657; 4 Bom. L. R. 547.

⁶ *Ram Sahye Bhukut v. Laljee Sahye (Lalla)* (1881), 8 Calc. 149; 9 C. L. R. 457; *Ram Soonder Roy v.*

Ram Sahye Bhugut (1882), 8 Calc. 919; "Mitakshara," chap. ii. s. 10; "Vyavahara Mayukha," chap. iv. s. 11; "Dayabhaga," chap. v.; "Daya Krama-Sangraha," chap. iii.; *post*, p. 260.

⁷ *Ante*, pp. 200-206.

⁸ *Ram Sahye Bhukut v. Laljee Sahye* (1881), 8 Calc. 149; 9 C. L. R. 457; *Ram Soonder Roy v. Ram Sahye Bhugut* (1882), 8 Calc. 919.

⁹ Chap. ii. s. 10, paras. 6, 9.

¹⁰ *Tirbeni Sahai v. Muhammad Umar* (1905), 28 All. 247.

¹¹ *Deo Kishen v. Budh Prakash* (1883), 5 All. 509.

¹² "Mitakshara," chap. ii. s. 10, para. 7; "Mayukha," chap. iv. s. 11, para. 2; "Viramitrodaya," chap.

This is an exception to the ordinary rule of Hindu law that an estate once vested cannot be divested.

A disqualification arising subsequent to separation does not exclude.¹

It is apparently competent to the other coparceners to waive the objection of disqualification.²

There is nothing to prevent a disqualified person from acquiring property by gift,³ or otherwise than by inheritance or partition.⁴

The burden of proof is upon the person seeking to prove the disability.⁵

The effect of exclusion from participation in the rights of the other members of the family is the same as if the person excluded were dead.⁶

So where the property of the coparcenary becomes vested in a single member, it is not divested by the birth of a son to the person who is disqualified,⁷ but where it has not so vested the son by birth becomes a coparcener.⁸

In Madras and Bombay a coparcener, governed by the Mitakshara law, may renounce his interest in the coparcenary property either in favour of the body of coparceners, or in favour of one or more individual coparceners,⁹ but in Bengal and the United Provinces he cannot renounce such interest without the consent of the whole body of coparceners.¹⁰ He

Renunciation
of interest.

viii. ver. 4; Bhattacharya's "Law of the Joint Family," pp. 396, 397, 411-414. See, however, Mayne's "Hindu Law," 7th ed., p. 635.

¹ "Mitakshara," chap. ii. s. 10, para. 6. See *Shamachurn Audhiccaree Byragee v. Roop Doss Byragee* (1866), 6 W. R. C. R. 68.

² See *Muddun Gopal Lal (Lala) v. Khikhinda Koer (Mussumat)* (1890), 18 I. A. 9; 18 Calc. 341.

³ See *Ganga Sahai v. Hira Singh* (1880), 2 All. 809.

⁴ *Court of Wards v. Kupulmun Sing* (1873), 10 B. L. R. 364; 19 W. R. C. R. 164.

⁵ *Helan Dasi v. Durga Das*, 1 C. L. J. 323; *Futtick Chunder Chatterjee v. Juggut Mohinee Dabee* (1874), 22 W. R. C. R. 348; *Chunder Monee Debia v. Kristo Chunder Mojomdar* (1872), 18 W. R. C. R. 375; *Issur Chunder Sein v. Ranees Dossee* (1865), 2 W. R. C. R. 125; *Nullit Chunder Goocho v. Bugola Soonduree Dossee* (1874), 21 W. R. C. R. 249. Cf.

Bhagaban Ramanuj Das (Mohunt) v. Roghunundun Ramanuj Das (Mohunt) (1895), 22 I. A. 94; 22 Calc. 843.

⁶ See Bhattacharya's "Law of the Joint Family," pp. 420-423; *Bapuji Lakshman v. Pandurang* (1882), 6 Bom. 616; "Mitakshara," chap. ii. s. 10, para. 9; "Viramitrodaya," chap. viii. s. 6; "Vivada Chintamani" (Tagore's translation), p. 244; "Dayabhaga," chap. v. para. 19; "Smriti Chandrika," chap. v. para. 32; "Vyavahara Mayukha," chap. iv. s. 11, para. 11.

⁷ *Bapuji Lakshman v. Pandurang* (1882), 6 Bom. 616.

⁸ *Krishna v. Sami* (1885), 9 Mad. 64. As to the conflict between this case and *Bapuji Lakshman v. Pandurang* (1882), 6 Bom. 616, see Mayne's "Hindu Law," 17th ed., pp. 814-816.

⁹ *Peddaya v. Ramalingam* (1888), 11 Mad. 406.

¹⁰ See *Chandar Kishore v. Dampat Kishore* (1894), 16 All. 369. See

can only renounce such interest with the acquiescence of the other members on his being given some trifle out of the family property.¹

By renouncing his interest, he does not affect the rights of his sons.²

RIGHTS OF COPARCENERS.

Rights of
coparceners.

I. Subject to any power the manager may have to make arrangements for the enjoyment of the property,³ each coparcener is entitled to joint possession of the coparcenary property with the other coparceners, and to the full enjoyment thereof.

Although he cannot sue for a share, he is entitled⁴ to enforce his right to joint possession by a suit.⁵

He can bring a suit within twelve years from the time when his exclusion from the joint family property becomes known to him.⁶

In a case governed by the Bengal school of law, the Judicial Committee said,⁷ "If there be two or more tenants in common, and one (A) be in actual occupation of part of the estate, and is engaged in cultivating that part in a proper course of cultivation as if it were his separate property, and another tenant in common (B) attempts to come upon the said part for the purpose of carrying on operations there inconsistent with the course of cultivation in which A is engaged, and the profitable use by him of the said part, and A resists and prevents such entry, not in denial of B's title, but simply with the object of protecting himself in the profitable enjoyment of the land, such conduct on the part of A would not entitle B to a decree for joint possession. . . . In India, a large proportion of the land, including many very large estates, is held in undivided shares, and if one shareholder can restrain another from cultivating a portion of the estate in a proper and husbandlike manner,

post, p. 289. An arrangement by which the widow of a coparcener was allowed to retain his share was upheld in *Dal Chund v. Soonder (Mussumat)* (1867), 2 Agra, 173.

¹ *Sudarsanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at p. 156; "Mitakshara," chap. i. s. 2, paras. 11, 12; "Manu," chap. ix. para. 207.

² *Shivajirao Madhavrao v. Vasantirao Madhavrao* (1908), 33 Bom. 267; 10 Bom. L. R. 778.

³ *Post*, p. 266.

⁴ See *Hulodhur Sein v. Gooroodoss Roy* (1873), 20 W. R. C. R. 126, and cases, *post*, p. 256, note 4; *Surendra*

Narain Sinha v. Hari Mohan Misser (1906), 33 Cal. 1201; *Stalkart v. Gopal Panday* (1873), 12 B. L. R. 197; 20 W. R. C. R. 58; *Nundun Lall v. Lloyd* (1874), 22 W. R. C. R. 74.

⁵ *Laluchand v. Girjappa* (1895), 20 Bom. 469.

⁶ Act IX. of 1908, Sched. I., art. 127. See *Sellam v. Chinnammal* (1901), 24 Mad. 441, and cases cited in U. N. Mitra's "Law of Limitation," in the notes to the above article.

⁷ *Watson and Company v. Ram Chand Dutt* (1890), 17 I. A. 110, at pp. 120, 121; 18 Cal. 10, at p. 21, 22.

the whole estate may, by means of cross injunctions, have to remain altogether without cultivation until all the shareholders can agree upon a mode of cultivation to be adopted, or until a partition by metes and bounds can be effected—a work which in ordinary course, in large estates would probably occupy a period including many seasons. In such a case, in a climate like that of India, land which has been brought into cultivation would probably become waste or jungle, and greatly deteriorated in value. In Bengal the courts of justice, in cases where no specific rule exists,¹ are to act according to justice, equity, and good conscience, and if in a case of shareholders holding lands in common, it should be found that one shareholder is in the act of cultivating a portion of the lands which is not being actually used by another, it would scarcely be consistent with the rule above indicated to restrain him from proceeding with his work, or to allow any other shareholder to appropriate to himself the fruits of the other's labour or capital."

The Court can prevent a coparcener from altering the nature of the property without the consent of the other coparceners, as by building on it, or otherwise interfering with the joint enjoyment.² Whether it will do so depends upon the nature of the case. It will not do so in the absence of a substantial injury.³

By arrangement between the parties, or at the discretion of the manager,⁴ portions may be occupied as a matter of convenience by individual coparceners. Where the coparceners permit one of their number to occupy a particular portion of the property and to improve it, they cannot oust him.⁵

In the absence of an express agreement no claim for rent can be made against a coparcener occupying coparcenary property.⁶

¹ See *ante*, p. 3.

² *Soshi Bhusan Ghose v. Gonesh Chunder Ghose* (1902), 29 Calc. 500; *Jankee Singh v. Bukhooree Singh*, Ben. S. D. A. 1856, p. 761; *Indurdeonarain Singh (Baboo) v. Toolseonarain Singh*, Ben. S. D. A. 1857, p. 765; *Guru Das Dhar v. Bijaya Gobinda Baral* (1868), 1 B. L. R. A. C. 108; 10 W. R. C. R. 171; *Sheopersad Singh v. Leela Singh* (1873), 12 B. L. R. 188; 20 W. R. C. R. 160; *Najju Khan v. Imtiaz-ud-din* (1895), 18 All. 115; *Rajendro Lall Gossami v. Shama Churn Lahori* (1879), 5 Calc. 188; 4 C. L. R. 417; *Shadi v. Anup Singh* (1889), 12 All. 436. *Contrà Dwarkanath Bhooyca v. Gopeenath Bhooyca* (1871), 12 B. L. R. 189, note; 16 W. R. C. R. 10; *Crowdee v. Bhekdhari Sing* (1871), 8 B. L.

R. App. 45; 16 W. R. C. R. 41; *Chunder Kant Chowdhry v. Nund Lall Chowdhry* (1871), 16 W. R. C. R. 277. See *Paras Ram v. Sherjit* (1887), 9 All. 661.

³ *Biswambhar Lal (Lala) v. Rajuram* (1869), 3 B. L. R. App. 67; 16 W. R. C. R. 140, note; *Brahmamoyi Chowdhurain (Srimati) v. Gopi Mohan Roy Chowdhury* (1910), 15 C. W. N. 188.

⁴ *Post*, p. 266.

⁵ See *Collector of 24 Pergunnahs v. Debnath Roy Chowdhry* (1874), 21 W. R. C. R. 222; *Jotee Roy v. Bhechuck Meah* (1873), 20 W. R. C. R. 288.

⁶ *Gobind Chunder Ghose v. Ram Coomarr Dey* (1875), 24 W. R. C. R. 393. See *Alladinee Dossai (Sreemutty) v. Sreenath Chunder Bose* (1873), 20 W. R. C. R. 258.

A coparcener cannot, without the consent of the other coparceners, appropriate a share of the proceeds of family property for the purpose of an investment for himself.¹

‘ An individual member of a Mitakshara family cannot sue for a share of the coparcenary property,² but he can sue to be put in possession jointly with his coparceners.³

There is also authority that he may sue a trespasser alone.⁴ At any rate, he may do so if he joins his coparceners as parties.

According to all the schools a coparcener is not entitled to sue for a declaration as to the amount of his share,⁵ or to sue his coparceners for a portion of the property held by them.⁶ His remedy is by partition.⁷

Limitation.

A suit by a person excluded from joint family property to enforce a right to share therein must be brought within twelve years from the time when the exclusion becomes known to the plaintiff.⁸

Where it is admitted or proved that the plaintiff was a member of a joint family, the burden of proving his exclusion, and his knowledge of such exclusion, for the period which would bar his right, lies upon the person asserting such exclusion.⁹

Adverse possession.

It is competent to a coparcener resisting a claim to property, which he is holding separately and which is alleged to be joint, to prove that he has acquired a right by adverse possession for twelve years.¹⁰ But as the possession of one member of a joint family is the possession of all,¹¹ he cannot so acquire such rights unless he proves that the right has been

¹ See *Bona Koorée (Mussamat) v. Boolee Singh (Baboo)* (1867), 8 W. R. C. R. 182.

² *Rajaram Tewari v. Lachman Prasad* (1869), 4 B. L. R. A. C. 118; 12 W. R. C. R. 478; *Phoolbas Koor v. Juggesoor Sahoy (Lalla)* (1872), 18 W. R. C. R. 48; *Chyet Narain Singh v. Bunwaree Singh* (1875), 23 W. R. C. R. 395; *Jugoo Lall Oopadhya v. Manoohur Lall Oopadhya* (1872), 19 W. R. C. R. 43.

³ *Naranbhai Vaghjibai v. Ramchod Premchand* (1901), 26 Bom. 141; 3 Bom. L. R. 598; *Ramchandra Kashipatkar v. Damodar Trimbak Patkar* (1895), 20 Bom. 467. As to parties to suits, see *post*, p. 256.

⁴ See *Radha Proshad Wasti v. Esuf* (1881), 7 Calc. 414; 9 C. L. R. 76; *Dursun Singh v. Durbijoy Singh*, 9 C. L. J. 623.

⁵ *Raol Gorain v. Teza Gorain* (1870), 4. B. L. R. App. 90.

⁶ *Trimbak Dixit v. Narayan Dixit* (1874), 11 Bom. H. C. 69; *Rutton Monee Dutt v. Brojomohun Dutt*

(1874), 22 W. R. C. R. 333; *Gobind Chunder Ghose v. Ramcoomar Dey* (1875), 24 W. R. C. R. 393.

⁷ See *post*, Chap. IX.

⁸ Act IX. of 1908. Sched. I., art. 127.

⁹ *Jivanbhat v. Anibhat* (1896), 22 Bom. 259; *Krishnabai v. Khangowda* (1893), 18 Bom. 197, at p. 202; *Dinkar Sadashiv v. Bhikaji Sadashiv* (1887), 11 Bom. 365; *Hari v. Maruti* (1882), 6 Bom. 741.

¹⁰ *Bainee Singh v. Bhurth Singh* (1866), 1 Agra, 162; *Runjeet Singh v. Madud Ali* (1868), 3 Agra, 222. See *Bhana Govind Guravi v. Vithoji Ladoji Guravi* (1866), 3 Bom. H. C. A. C. 170.

¹¹ *Jogendra Nath Rai v. Baladeo Das* (1907), 35 Calc. 961; 12 C. W. N. 127; *Asud Ali Khan (Sheikh) v. Akbar Ali Khan* (1877), 1 C. L. R. 364; *Yusaf Ali Khan v. Chubbee Singh* (1873), 5 N. W. P. 122. This has, of course, no application after a separation; *Vaidyanatha Aiyar v. Aiyasamy Aiyar* (1908), 32 Mad. 191.

claimed or asserted by other members of the family, and denied by him at least twelve years before suit.¹

Similarly, a person entitled to property as his separate acquisition may lose his right in consequence of the family having held possession adverse to his exclusive right for a period of twelve years.²

II. A coparcener is entitled to receive from the coparcenary property maintenance for himself, his wife, and his children,³ and for such persons as he is legally or morally bound to support,⁴ and provision for all usual and proper religious observances which should be performed by himself and such persons,⁵ also provision for the education of his sons, and for the marriage expenses of his daughters,⁶ or of other female dependents of his family.

As to the amount of maintenance, see *ante*, p. 83.

As to the maintenance of such persons after the death of the coparcener, see *post*, p. 260.

All ancestral property is, while it remains undisposed of and unpartitioned, charged with the maintenance of all persons who are entitled to maintenance therefrom⁷ in the same sense that the maintenance of a widow is charged upon the estate of her husband.⁸

¹ *Shurfunnessa Bibee Chowdhra'n v. Kylash Chunder Gungopadhyia* (1875), 25 W. R. C. R. 53; *Rukhaldas Bundo-padhyia v. Indru Monce Debi* (1877), 1 C. L. R. 155.

² *Post*, p. 237.

³ *Ayyavu Muppanar v. Niladatchi Ammal* (1862), 1 Mad. H. C. 45; "Manu," chap. ix. para. 108; "Narada Smriti," chap. ix. paras. 26-28; Bhattacharya's "Law of the Joint Family," pp. 280, 281. It has been held (12 Bom. II. C. 96, note) that a coparcener who can sue for partition cannot sue for maintenance, but it is submitted that there is no reason why he should be forced to such a proceeding. As to daughters, see *Mankoonwur v. Bhugoo* (1822), 2 Borr. 139, at p. 144; *ante*, p. 212. As to sisters, see "Yajnavalkya," bk. ii. chap. v. para. 124A.

⁴ *Ante*, pp. 200-207. "Narada Smriti," chap. xiii. paras. 26-28, 33; K. K. Bhattacharya's "Law of the Joint Family," p. 293; R. L. Mitra's "Law of Joint Property," p. 69.

⁵ "The indispensable duties alluded

to in the 'Mitakshara' are undoubtedly the annual sradhs, the ceremony of investiture with sacred thread among the three superior castes, the marriage of the minor girls of the family, where such marriage must be celebrated before the girls arrive at the age of puberty (see *ante*, pp. 29, 30), and other religious ceremonies enjoined by the sacred writings, necessary to be performed at stated times and the non-performance of which would be a cause of sin, or forfeiture of caste, or would lower the position of the family," K. K. Bhattacharya's "Law of the Joint Family," p. 277.

⁶ *Ante*, p. 49. See *Vaikuntam Am-mangar v. Kallapiran Ayyangar* (1900), 23 Mad. 512.

⁷ *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. H. C. 63. As to impartible property, see *Mallikarjuna Prasada Nayudu (Raja Yarlagadda) v. Durga Prasada Nayudu (Raja Yarlagadda)* (1900), 27 I. A. 151; 24 Mad. 147; 5 C. W. N. 74; 2 Bom. L. R. 945.

⁸ *Ante*, pp. 85-91.

III. A coparcener is entitled to receive such information as he may require as to the management of the property,¹ and to be consulted in matters of great importance thereto, such as the sale or mortgage of the property, or of any portion thereof.

IV. A coparcener is entitled to sue to impeach and to restrain the acts of the manager or of other coparceners which are in excess of their powers.²

V. Except that under the Mitakshara school of law there can be no partition directly between grandfather and grandson while the father is alive, or between great-grandfather and great-grandson when the father or grandfather is alive, every adult coparcener is entitled to obtain a partition of the property when he desires to be separated from the coparcenary.³

This right exists as long as there is a joint tenancy.⁴

As to minors, see *post*, pp. 313–315.

Where father
is manager.

“The rights of the coparceners in . . . an undivided Hindu family governed by the law of the Mitakshara, which consists of a father and his sons, do not differ from those of the coparceners in a like family, which consists of undivided brethren, except so far as they are affected by the peculiar obligation of paying their father's debts, which the Hindu law imposes upon sons,⁵ and the fact that the father is in all cases naturally, and, in the case of infant sons, necessarily, the manager of the joint family estate.”⁶

Effect of death
of coparcener.

On the death of a coparcener, subject to the Mitakshara school of law, his interest in the coparcenary property does not pass by inheritance. It lapses, or, as it is generally put, his rights pass by survivorship to the other coparceners,⁷ subject

¹ See *post*, Chap. VII.

² *Post*, p. 291. See *Suraj Bunsli Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88, at p. 101; 5 Calc. 148, at p. 165; 4 C. L. R. 226, at p. 233; *Anant Ramrav v. Gopal Balvant* (1894), 19 Bom. 269; *Ganpat v. Annaji* (1898), 23 Bom. 144; *Ramchandra Kashi Patkar v. Damodhar Trimbak Patkar* (1895), 20 Bom. 467; *Gopee Kishen Gossain v. Hem Chunder Gossain* (1870), 13 W. C. R. R. 322, at p. 323.

³ *Post*, pp. 310, 311. He is not entitled to sue only for a declaration of his

right to a share, or to claim otherwise than in a partition suit property held by the family as joint, *ante*, p. 226.

⁴ *Bisheshwar Das v. Ram Prasad* (1906), 28 All. 627.

⁵ *Post*, p. 294.

⁶ *Suraj Bunsli Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88, at pp. 100, 101; 5 Calc. 148, at p. 165; 4 C. L. R. 226, at p. 233. See *Subbayya v. Surayya* (1887), 10 Mad. 251, at p. 254. *Post*, p. 258.

⁷ *Rajnarain Singh v. Heeralal* (1878), 5 Calc. 142; *Bhimul Doss*

to the rule that where he leaves male issue they represent his rights to a partition.¹ His death also has the effect of introducing into the coparcenary one who is excluded by the rule which limits the coparcenary to four generations.²

This process continues until partition.³

According to the principles of Hindu law, there is coparcenaryship between the different members of a united family, and survivorship following upon it. There is community of interest and unity of possession between all the members of the family, and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession.⁴

The right to partition determines the right to take by survivorship.⁵

This principle of survivorship applies also to a tarwad.⁶

Where there is no coparcener, property, which would otherwise be coparcenary, would pass by inheritance to the heirs of the deceased.⁷ There is no inheritance while there is a surviving coparcener, however remotely connected with the deceased.⁸

In a case governed by the Bengal school of law the interest of the coparcener passes on his death by will or inheritance.⁹

v. Choonee Lall (1877), 2 Calc. 379; *Debi Parshad v. Thakur Dial* (1875), 1 All. 105. To the exclusion of the widow, *Parbati Kumari Debi (Srimati Rani) v. Jagadis Chunder Dhabal* (1902), 29 I. A. 82, at p. 96; 29 Calc. 433, at p. 452; 6 C. W. N. 490, at p. 494; 4 Bom. L. R. 365; or other heir, see *Bhimul Doss v. Choonee Lall* (1877), 2 Calc. 377; *Debi Parshad v. Thakur Dial* (1875), 1 All. 105; *Sadabart Prasad Sahu v. Foolbush Koer* (1869), 3 B. L. R. F. B. 31; 12 W. R. F. B. I. S. C. *Sudabart Pershad Sahoo v. Lof Ali Khan* (1870), 14 W. R. C. R. 339; *Bnee Pershad v. Mohaboodhy (Mussamut)* (1867), 7 W. R. C. R. 292; *Mooniah (Mussamut) v. Teeknoo (Mussamut)* (1867), 7 W. R. C. R. 440; *Ratan Dabee v. Modhoooodun Mohapator* (1878), 2 C. L. R. 328. The enlarged share is subject to the same incidents as the original share. *Gungoomull v. Bunsseedhur* (1869), 1 N. W. P. H. C. 170. The Curators Act (XIX. of 1841) has no application: *Sato Koer v. Gopal Sahu* (1907), 34 Calc. 929; 12 C. W. N. 65.

¹ *Post*, p. 312. See *Manjanatha v. Narayana* (1882), 5 Mad. 362.

² *Ante*, pp. 219, 220.

³ *Rajnarain Singh v. Heeralall* (1878), 5 Calc. 142.

⁴ *Katama Natchiar v. Rajah of Shrivagunga* (1863), 9 M. I. A. 543, at p. 615; 2 W. R. P. C. 31, at pp. 39, 40.

⁵ *Venkayamma Garu (Raja Chelikani) v. Venkataramanayamma (Raja Chelikani)* (1902), 29 I. A. 156, at p. 165; 25 Mad. 678, at p. 687; 7 C. W. N. 1, at p. 8; 4 Bom. L. R. 657; See *Jogeswar Narain Deo v. Ramchund Dutt* (1896), 23 I. A. 37, at p. 44; 23 Calc. 670, at p. 679.

⁶ *Unmanga v. Appadorai Patter* (1910), 34 Mad. 387.

⁷ *Post*, p. 285.

⁸ *Ram Narain Singh (Rajah) v. Pertum Singh* (1875), 11 B. L. R. 397, at p. 404; 20 W. R. C. R. 189, at p. 191; *Ratan Dabee v. Modhoooodun Mohapator* (1878), 2 C. L. R. 328.

⁹ *Ante*, pp. 217, 218.

Where there is a joint family business the death of a member of the family does not *per se* dissolve the business.¹

Under Mitakshara shares not defined.

Under the Mitakshara school, the shares of coparceners are not defined until there be a separation, or the members of the family agree among themselves with regard to particular property that it shall henceforth be the subject of ownership in defined shares.²

The removal of coparceners by death, and the accession of new coparceners by birth, is continually affecting the interest of the coparceners to the extent that it increases or diminishes the share, which, if there were a partition, would be allotted to them respectively, but until separation no coparcener has a greater interest in the coparcenary property than any one of the other coparceners.

In the well-known case of *Appovier v. Rama Subba Aiyar* (1866),³ Lord Westbury said, "According to the true notion of an undivided family in Hindu law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of rent and claim to take from the collector or receiver of the rents a certain definite share. The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment by the members of an undivided family."⁴

A coparcener in a Mitakshara family has no specific property in the coparcenary property, but only an interest which may ripen into specific property on a partition.⁵

COPARCENARY PROPERTY.

Coparcenary property consists of—

Nature of coparcenary property.

(a) All property in which the members of a joint family have a common interest and a common possession, and therefore a right to partition.⁶

¹ *Samalbhai Nathubhai v. Someshvar* (1880), 5 Bom. 38, at p. 40; *In the matter of Haroon Mahomed* (1890), 14 Bom. 189, at p. 194. As to the death of the manager, see *post*, p. 264.

² *Post*, Chap. IX.

³ 11 M. L. A. 75, at pp. 89-90; 8 W. R. P. C. 1.

⁴ As to the right to joint possession, see *ante*, p. 224.

⁵ *Subramanya Pandya Chokka Talaver v. Siva Subramanya Pillai* (1894), 17 Mad. 316, at p. 327.

⁶ *Katama Natchiar v. Shivagunga (Rajah of)* (1863), 9 M. L. A. 543, at p. 615; 2 W. R. P. C. 1, at pp. 39, 40; *Venkayamma Garu (Raja Chelikanani) v. Venkataramanayamma (Raja Chelikanani)* (1902), 29 I. A. 156, at p. 164; 25 Mad. 678, at p. 687; 7

"The principle of joint tenancy appears to be unknown to Hindu law, Property held except in the case of coparcenary between the members of an undivided jointly family."¹

Thus property acquired by a transfer to members of the family jointly belongs to the coparcenary.² Joint transfer.

Where property has been acquired jointly in business or otherwise by their joint labour by the members of a joint family, even without resort to the family funds,³ it is to be presumed to be the property of the family as such,⁴ but this presumption may be rebutted by proof that there was only an ordinary partnership, that is to say, a partnership which was the creature of contract, and not of birth and relationship, in which case the members would be entitled to share in accordance with their shares in the partnership, and there would be no rights of survivorship, or other incidents of coparcenary property.⁵ Acquisitions by family.

The presumption does not apply when the business is carried on by some only of the members of the family without any aid from the family funds.⁶

Mr. Mayne contends that in the case of property acquired by the joint exertions of the members of the family, but without any aid from the family funds, the sons would acquire no interest by birth.⁷ "If the joint acquirers intended to hold the property so acquired as co-owners, and not as joint family property in the Mitakshara sense of the expression, this view would be perfectly sound. But if, as supposed, the property was acquired by all the members of the undivided family, by their joint

C. W. N. 1, at p. 8; 4 Bom. L. R. 657; *Karsondas Dharamsey v. Gangabai* (1908), 32 Bom. 479; 10 Bom. L. R. 184. See *Shamnarin v. Court of Wards* (1873), 20 W. R. C. R. 197.

¹ *Jogeswar Narain Deo v. Ram Chund Dutt* (1896), 23 I. A. 37, at p. 44; 23 Calc. 670, at p. 679; *Gopi v. Jaldhara (Musammal)* (1910), 33 All. 41.

² *Radhabai v. Nanarav* (1879), 3 Bom. 151. Cf. *Transfer of Property Act* (IV. of 1882), s. 45.

³ See *Rampershad Tewarry v. Sheo-churn Doss* (1866), 10 M. I. A. 490, at p. 506; *Shamnarin v. Court of Wards* (1873), 20 W. R. C. R. 197, and cases note 5 below. See Colebrooke's "Digest," vol. iii. p. 386; "Mitakshara," chap. i. s. 4, para. 15; "Manu," chap. ix. para. 215. See, however, *Chatturbhoj Meghji v. Dharamsi Naranji* (1884), 9 Bom. 438, at pp. 445, 446. As to property

acquired with the aid of family funds, see *post*, pp. 237, 238.

⁴ *Gopaldasani Chetti v. Arunachalam Chetti* (1903), 27 Mad. 32, and cases *post*, note 3.

⁵ See *Rampershad Tewarry v. Sheo-churn Doss* (1866), 10 M. I. A. 490, at p. 506; *Chatturbhoj Meghji v. Dharamsi Naranji* (1884), 9 Bom. 438, at p. 445; *Sudarsanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at p. 156; *Ram Narain Nursing Doss v. Ram Chunder Junkee Loll* (1890), 18 Calc. 86. For an instance of a partnership between members of a joint family and a stranger, see *Anant Ram v. Channu Lal* (1903), 25 All. 378.

⁶ *Sudarsanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149.

⁷ "Hindu Law," 7th ed., pp. 348, 349. See also *Chatturbhoj Meghji v. Dharamsi Naranji* (1884), 9 Bom. 438, at pp. 445, 446.

labour, it would, in the absence of any indication of intention to the contrary, be owned by them as joint family property, and in that case their male issue, who, by their birth, become members of such undivided family, necessarily acquire a right by birth in such property.”¹

Gift or devise
to joint
family.

It has been held that in the case of a gift or a devise to the members of a joint family, the property would not be held as coparcenary property.² It is submitted that property given or devised to all the members of a joint family would in the absence of the expression of a contrary intention be coparcenary.³

It has been suggested⁴ that the view submitted above might be inconsistent with the Tagore case,⁵ inasmuch as unborn persons might on birth obtain rights in the coparcenary. Recent decisions as to a gift to a class⁶ negative this suggestion.

As to a *babuana* grant for the benefit of a junior member of the family and his direct male line, see *Ramchandra Marwari v. Mudeeshwar Singh* (1906), 33 Calc. 1158; 10 C. W. N. 979; *Durgadut Singh v. Rameshwar Singh* (1909), 36 I. A. 176; 36 Calc. 943; 13 C. W. N. 1013; 11 Bom. L. R. 901; *Laliteswar Singh v. Bhabeswar Singh* (1908), 35 Calc. 823; 12 C. W. N. 958.

Acquired by
compromise.

Whether property, which may have been ancestral, but has been acquired by virtue of a compromise or arrangement, belongs to the coparcenary depends upon the nature of the arrangement.⁷

Maternal
grandfather's
property.

Property inherited from the maternal grandfather by two or more grandsons (by the same daughter) living as members of a joint family,⁸ and holding the same jointly, is, in a case governed by the Mitakshara law, on a similar footing.

¹ *Sudarsanam Maistri v. Nurasimhulu Maistri* (1901), 25 Mad. 149, at pp. 155, 156.

² *Kishori Dubain v. Munda Dubuin* (1911), 33 All. 665; *Diwali (Bai) v. Bechardas (Patel)* (1902), 26 Bom. 445.

³ *Ante*, p. 230, note 6; 231, note 1; *Radhubai v. Nanarav* (1879), 3 Bom. 151. See *Yethirajulu Naidu v. Mukunthu Naidu* (1905), 28 Mad. 363, at p. 369; *Kunhacha Umma v. Kutti Mammi Hajee* (1892), 16 Mad. 201.

⁴ *Diwali (Bai) v. Bechardas (Patel)* (1902), 26 Bom. 445, at p. 448; 4 Bom. L. R. 102.

⁵ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), I. A. Sup. Vol. 47; 9 B. L. R. 377; 18 W. R. C. R. 359.

⁶ *Bhugabati Barmanya v. Kali Charan Singh* (1911), 38 I. A. 54; 38 Calc. 468; 15 C. W. N. 303; S. C. in Court below (1905), 32 Calc. 992; 9 C. W. N. 749; 13 Bom. L. R. 375;

Radha Prasad Mallick v. Ranimoni Dasi (1910), 38 Calc. 188; *Bishen Chand (Rai) v. Asmaida Koer* (1883), 11 I. A. 164; 6 All. 560; *Ram Lal Sett v. Kanailall Sett* (1886), 12 Calc. 663; *Advocate-General v. Karmali Rahimbai* (1903), 29 Bom. 133. See Phillips and Trevelyan's "Law of Hindu Wills," pp. 196, 300, 301.

⁷ *Mahabir Kower v. Jubha Sing* (1871), 8 B. L. R. 38; 16 W. R. C. R. 221.

⁸ *Venkayamma Garu (Raja Chelikani) v. Venkataramanayamma (Raja Chelikani)* (1902), 29 I. A. 156, at pp. 164, 165; 25 Mad. 678, at p. 687; 7 C. W. N. 1, at p. 8; 4 Bom. L. R. 657; overruling *Jasoda Koer v. Sheo Pershad Singh* (1889), 17 Calc. 33, and *Saminadha Pillai v. Thangathanni* (1895), 19 Mad. 70; *Vythinaltha Ayyar v. Yeggia Narayana Ayyar* (1903), 27 Mad. 382. As to the case where a single grandson by daughter inherits, see *post*, pp. 234, 235.

It is submitted that where the grandsons are by different daughters the property would not be coparcenary, as they belong to different families.¹

A Full Bench of the Madras High Court has declined to extend this principle to property inherited from a woman by her sons as heirs of her *stridhan* or to property inherited by sister's sons, and expressed their inability to apply it "to cases other than those in which the inheritance devolves from a paternal or maternal male ancestor on his lineal descendants whether as 'unobstructed,' or as 'obstructed heritage.'" They point out that whereas the class of daughters is capable of being added to after the vesting, the class of sister's sons would be added to after the vesting by the birth of others.²

It is submitted that the principles enunciated by the Privy Council,³ apply to the *stridhan* property, and to property held by sister's sons jointly.

(b) In cases governed by the Mitakshara school of law, all property, whether movable or immovable,⁴ and however originally acquired,⁵ which is inherited by what is called "unobstructed heritage,"⁶ i.e. which is inherited from a natural or adopted⁷ father, father's father, or father's father's father, is coparcenary property⁸ as regards the issue of the person so inheriting it.⁹

"Unobstructed" succession.

¹ *Vythinutha Ayyar v. Yegga Narayana Ayyar* (1903), 27 Mad. 382, at p. 385; see *post*, pp. 234, 235.

² *Karuppai Nachiar v. Sankaranarayana Chetty* (1903), 27 Mad. 300, at p. 314.

³ *Venkayamma Garu (Raja Chelakani) v. Venkataramanayyamma (Raja Chelakani)* (1902), 29 I. A. 156, 25 Mad. 678; 7 C. W. N. 1; 4 Bom. L. R. 657; *ante*, p. 232.

⁴ *Jugmohandas Mangaldas v. Sir Mangaldas Nathubhoy* (1886), 10 Bom. 528, at pp. 570-574. This includes a right of occupancy, *Mahabir Prasad v. Basdeo Singh* (1884), 6 All. 234.

⁵ *Chatturbhoj Meghji v. Dharamsi Naranji* (1884), 9 Bom. 438, at p. 450; *Hardai Narain v. Haruck Dhari Singh* (1882), 12 C. L. R. 104.

⁶ *Apratibandha Daya* (inheritance not liable to be obstructed) as distinguished from *Sapratibandha Daya* (inheritance liable to be obstructed, *post*, p. 244). The distinction between the two forms of heritage is the same as the distinction between inheritance by an heir at law, and inheritance by an heir presumptive. In the latter case there is a possibility of a nearer heir being born. In the former case

there is no such possibility.

⁷ This has no application to property inherited by a person adopted according to the *illatom* system (*ante*, p. 154); *Challa Papi Reddi v. Challa Koti Reddi* (1872), 7 Mad. H. C. 25. See *Ramakrishna v. Subbakka* (1889), 12 Mad. 442.

⁸ *Nund Coomar Lall (Baboo) v. Razecoddeen Hossain* (1872), 10 B. L. R. 183; 18 W. R. C. R. 477; *Nallatambi Chetti (Rayadur) v. Mukunda Chetti (Rayadur)* (1868), 3 Mad. H. C. 455; *Javahir Singh v. Guyan Singh* (1868), 3 Agra. H. C. 78; *Jugmohandas Mangaldas v. Sir Mangaldas Nathubhoy* (1886), 10 Bom. 528; *Gunga Prasad v. Ajudhia Pershad Singh* (1881), 8 Calc. 131, at p. 134; 9 C. L. R. 417, at pp. 421, 422. See also *Jasoda Koer v. Sheo Pershad Singh* (1889), 17 Calc. 33 (overruled by the Judicial Committee on another point, *ante*, p. 232); *Ramnarrain Singh (Rajah) v. Pertum Singh* (1873), 11 B. L. R. 397, at p. 401; 20 W. R. C. R. 189, at p. 190; *Janki v. Nandram* (1888), 11 All. 194. See J. C. Ghose's "Hindu Law," 2nd ed., pp. 375, 376; "Viramitrodaya," G. C. Sircar's translation, p. 72.

⁹ *Gurumurthi Reddi v. Gurammal*

"In the 'Mitakshara,' chap. i. s. 1, v. 3, heritage is said to be 'of two sorts, unobstructed, or liable to obstruction. The wealth of the father or paternal grandfather becomes the property of his sons or of his grandsons in right of their being his sons or grandsons, and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles), brothers, and the rest upon the demise of the owner, if there be no male issue; and thus the actual existence of a son and the survival of the owner are impediments to the succession; and, on their ceasing, the property devolves on the successor in right of his being uncle or brother. This is an inheritance subject to obstruction.'"¹

Property inherited after the death of a widow to whom it was assigned in lieu of maintenance is on the same footing.²

It is only the descendants of the person so inheriting, who acquire an interest in the property. Collateral relations who happen to be joint with such person acquire no such interest.³

Allotted to widow for maintenance.
Collateral relations.

Inheritance from maternal grandfather.

It is unsettled whether property inherited from the maternal grandfather by a single grandson⁴ is also coparcenary property.

The Madras decisions hold that property inherited by a daughter's son is coparcenary.⁵ The Bengal and Allahabad High Courts have entertained a different view,⁶ and there is no reported decision in Bombay on the subject.⁷

The Judicial Committee has held that such property is not "self-acquired,"⁸ and therefore it would seem to follow that it is coparcenary,

(1908), 32 Mad. 86, at p. 88. It is otherwise as regards other persons, see *Janki v. Nandram* (1888), 11 All. 194, at p. 198.

¹ *Nund Coomarr Lall (Baboo) v. Razecooddeen Hossein* (1872), 10 B. L. R. 183, at p. 191; 18 W. R. C. R. 477, at p. 479; *Debi Parshad v. Thakur Dial* (1875), 1 All. 105, at p. 112.

² *Beni Parshad v. Puran Chand* (1895), 23 Calc. 262, at p. 273.

³ See *Gopal Dutt Pandey v. Gopalal Misser*, Ben. S. D. A., 1859, p. 1314; *Janki v. Nandram* (1888), 11 All. 194, at p. 198.

⁴ As to where there are several grandsons, see *ante*, pp. 232, 233.

⁵ *Vythinaltha Ayyar v. Yeggie Narayana Ayyar* (1903), 27 Mad. 382; *Muttayan Chetti v. Sangili Vira Pandia Chinna Tambiar* (1879), 3 Mad. 370 (this question did not arise on appeal in this case (1882), 9 I. A. 128; 6 Mad. 1; 12 C. L. R. 169); *Sivaganga Zemindar v. Lakshmana* (1885), 9 Mad. 188, at p. 190. These last two cases were doubted in

Venkataramanayamma Garu (Sri Raja Chelikuni) v. Appa Rau Bahadur Garu (1897), 20 Mad. 207, at p. 219, which was reversed on a different point by the Judicial Committee; see *Venkataramanayamma Garu (Raja Chelikuni) v. Venkataramanayamma (Raja Chelikuni)* (1902), 29 I. A. 156; 25 Mad. 678; 7 C. W. N. 1; 4 Bom. L. R. 657.

⁶ *Jasoda Koer v. Sheopershad Singh* (1889), 17 Calc. 33, at p. 38 (differed from on another point in *Venkataramanayamma Garu (Raja Chelikuni) v. Venkataramanayamma (Raja Chelikuni)* (1902), 29 I. A. 156; 25 Mad. 678; 4 Bom. L. R. 657; *Jamna Prasad v. Ram Partap* (1907), 29 All. 667.

⁷ See *Nanabhai Ganpatrav Dhairayavan v. Achratbai* (1886), 12 Bom. 122, at p. 134.

⁸ *Muttayan Chettiar v. Sangili Vira Pandia Chinna Tambiar* (1882), 9 I. A. 128, at p. 143; 6 Mad. 1, at p. 16; 12 C. L. R. 169, at p. 182. In the Court below, the High Court held (*Muttayan Chetti v. Sangili Vira Pandia Chinna Tambiar*, 3 Mad. 370,

with all the incidents of coparcenary property,¹ unless the expression was not used in a technical sense.²

A later decision of the Judicial Committee dealt with the rights of daughter's sons, living jointly,³ but that case is distinguishable.⁴

Mr. Mayne⁵ says, "When the case arises again it will be material to remember that property only becomes joint property by reason of being ancestral property where the ancestor from whom it was derived was a paternal ancestor. See '*Mitakshara*,' chap. i. s. 1, paras. 3, 5, 21, 24, 27, 33; s. 5, paras. 2, 3, 5, 9-11." See *ante*, p. 233. and *post*, p. 244.

It is submitted that Mr. Mayne's view is correct, and that according to the *sastras* the property should be held not to be coparcenary.

(c) In cases governed by the Mitakshara school of law, the share of coparcenary property allotted to any member on partition becomes coparcenary property as regards his issue,⁶ whether such issue were or were not born at the time of partition.⁷

The circumstance that the person to whom the property is allotted discharges it from encumbrances does not alter its nature.⁸ If the person to whom the property has been allotted has no issue, it passes to his heir.⁹

(d) Self-acquired property, given or devised by a Hindu governed by the Mitakshara school of law to a son is, according to the High Courts of Bengal and Madras, in the absence of any contrary intention appearing from the gift or will,¹⁰ to be taken to be coparcenary property, so far as the issue of that son are

Shares
allotted on
partition.

Gift or devise
by father.

at p. 375) that the sons could not interfere with their father's action with regard to it, but there is, it is submitted, no reason for this distinction.

¹ *Ante*, p. 230

² See *post*, p. 239.

³ *Venkayamma Garu (Raja Chelikani) v. Venkataramanayamma (Raja Chelikani)* (1902), 29 I. A. 156; 25 Mad. 678; 4 Bom. L. R. 657.

⁴ *Jamna Prasad v. Ram Partap* (1907), 29 All. 667.

⁵ "Hindu Law," 7th ed., p. 344, note (x). See also West and Bühler (3rd ed.), pp. 714, 715.

⁶ *Lal Bahadur v. Kanhaia Lal* (1907), 34 I. A. 65; 29 All. 244; 11 C. W. N. 417; 9 Bom. L. R. 597; *Chatturbhoj Meghji v. Dharamsi Naranji* (1884), 9 Bom. 438; *Adurmoni Deyi v. Chowdhry Sib Narain Kur*

(1877), 3 Calc. 1; *Muddun Gopal Thakoor v. Ram Buksh Pandey* (1863), 6 W. R. C. R. 71; *Lakshmi Bai v. Ganpat Moroba* (1868), 5 Bom. H. C. O. C. J. 129; *Mewa Koonwer (Ranee) v. Oudh Beharee Lall (Lalla)* (1867), 2 Agra, 311. See *Khandubai v. Pirbhai* (1900), 2 Bom. L. R. 76.

⁷ In *Adurmoni Deyi v. Chowdhry Sib Narain Kur* (1877), 3 Calc. 1, the son was not born at the time of the partition.

⁸ *Visalatchi Ammal v. Annasamy Sastry* (1870), 5 Mad. H. C. 150.

⁹ See *Bejai Bahadur Singh v. Bhupindar Bahadur Singh* (1895), 22 I. A. 139; 17 All. 456.

¹⁰ In *Lakshmi Bai v. Ganpat Moroba* (1868), 5 Bom. H. C. O. C. 128, the property was given to the grandsons in severalty.

concerned.¹ The Bombay and Allahabad High Courts repudiate such presumption.²

Where coparcenary property purports to be given or devised to a son or other coparcener its character would be obviously unchanged,³ even where such gift or devise is permissible.⁴

Reunion.

(e) The joint property of reunited coparceners.⁵

Property
treated as
coparcenary.

(f) Property which was originally the separate⁶ property of an individual member of a joint family, but has been treated by him as coparcenary property, belongs to the coparcenary.⁷

Where the members of a family having coparcenary property put their separate earnings into the joint stock, the proceeds of such earnings are to be presumed to be joint.⁸ The treatment must be such as to show unmistakably an intention to throw

¹ *Nagalingam Pillai v. Ramachandru Tevar* (1901), 24 Mad. 429; *Muddun Gopal Thakoor v. Ram Buksh Pandey* (1863), 6 W. R. C. R. 71. See *Tara Chand v. Reeb Ram* (1866), 3 Mad. H. C. 50.

² See *Nanabhai Ganpatrav Dhairayyan v. Achratbai* (1886), 12 Bom. 122, at pp. 131, 132. (As in this case the devise was to the sons jointly, the property was coparcenary, ante, p. 230.) *Jugmohandas Mangaldas v. Sir Mangaldas Nathubhoy* (1886), 10 Bom. 528; *Pursotam Rao Tanti v. Janki Bai* (1907), 29 All. 354.

³ See *Tara Chand v. Reeb Ram* (1866), 3 Mad. H. C. 50, at p. 55; *Hardai Narain v. Haruck Dhari Singh* (1882), 12 C. L. R. 104; *Nanomi Babuasin (Mussamut) v. Modun Mohun* (judgment of High Court, 1882), 13 I. A. 1, at pp. 5, 6; 13 Calc. 21.

⁴ See *Lakshman Dada Naik v. Ramchandra Dada Naik* (1876), 1 Bom. 561, at p. 563. Affirmed on appeal (1880), 7 I. A. 181; 5 Bom. 48; 7 C. L. R. 320.

⁵ *Jasodu Koer v. Sheo Pershad Singh* (1889), 17 Calc. 33, at p. 38; *Narasimha Charlu (Samudrala Varaha) v. Venkata Singaramma (Samudrala)* (1909), 33 Mad. 165. As to reunion, see *post*, pp. 343, 344.

⁶ *Post*, pp. 238 *et seq.*

⁷ *Sethuramaswamiar v. Meruswamiar* (1909), 34 Mad. 470; *Gopala-*

sami v. Chinnaasami (1884), 7 Mad. 458; *Krishnaji Mahadev Mahajan v. Moro Mahadev Mahajan* (1890), 15 Bom. 32, at p. 39; *Sudar-sanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at p. 154; *Tottempudi Venkataratnan v. Tottempudi Seshamma* (1903), 27 Mad. 228. See *Venkayamma Garu (Raja Chelikani) v. Venkataramanayamma (Raja Chelikani)* (1902), 29 I. A. 156, at p. 166; 25 Mad. 678, at p. 688; 7 C. W. N. 1, at pp. 9, 10; 4 Bom. L. R. 657; *Shankar Baksh v. Hardeo Baksh* (1888), 16 I. A. 71; 16 Calc. 397; *Hurpurshad v. Sheo Dyal* (1876), 3 I. A. 259; 26 W. R. C. R. 55; *Hardeo Bux (Thakoor) v. Jawahir Singh* (1877), 4 I. A. 178; 3 Calc. 522; S. C. (1879), 6 I. A. 161; *Rampershad Tewarry v. Sheo Churn Doss* (1866), 10 M. J. A. 490, at pp. 505, 506; *Birajun Koer v. Luchmi Narain Mahata* (1884), 10 Calc. 392, at p. 398; *Tribhovandas v. Smith* (1896), 21 Bom. 349; S. C. in Court below (1895), 20 Bom. 316; *Nagalingam Pillai v. Ramachandra Tevar* (1901), 24 Mad. 429; *Himmat Bahadur v. Bhawani Kunwar* (1908), 30 All. 352. As to Government grants, see *post*, p. 242.

⁸ *Lal Bahadur v. Kanhaia Lal* (1907), 34 I. A. 65; 29 All. 244; 11 C. W. N. 417; 9 Bom. L. R. 597; *Chabildas Lalubhai v. Ramdas Chabildas* (1909), 11 Bom. L. R. 606.

the property into the common stock. Where it is plain that no gift can have been intended, none can be inferred.¹

The right to claim property as separate may be barred by the operation of the law of Limitation.² Right by prescription.

(g) Accretions to coparcenary property. Property acquired out of the income or with the aid³ or on the credit⁴ of coparcenary property, whether movable or immovable,⁵ the income of such property,⁶ the proceeds of sale of such property, and property purchased out of such proceeds,⁷ or from movable property belonging to the family,⁸ are coparcenary property. Accretions and acquisitions.

Even where the acquirer has received some aid from the family property he is entitled to treat the acquisition as separate, if the family property has not contributed in a material degree to the acquisition,⁹ and was not directly instrumental in bringing it about.¹⁰ See *post*, pp. 239, 240. Slight or indirect aid.

¹ See *Muddun Gopal Lal (Lala) v. Khikhinda Koer (Mussumat)* (1890), 18 I. A. 9, at p. 21; 18 Calc. 341, at p. 348.

² See *Yasudeva, Padhi Khadanga Garu v. Maguni Devan Bakshi Mahapatra Garu* (1901), 28 I. A. 81; 24 Mad. 387; 5 C. W. N. 545; 3 Bom. L. R. 303.

³ *Lal Bahadur v. Kunhaia Lal* (1907), 34 I. A. 65; 29 All. 244; 11 C. W. N. 417; 9 Bom. L. R. 597; *Umrithnath Chowdhry v. Goureenath Chowdhry* (1870), 13 M. I. A. 542; 15 W. R. P. C. 10; *Isree Prshad Singh v. Nasib Koor* (1884), 10 Calc. 1017; *Subbaya v. Surayya* (1887), 10 Mad. 251 (a case of waste land brought under cultivation); *Ajodhya Purshad v. Mahadeo Parshad* (1909), 14 C. W. N. 221; *Kristappa Chetty v. Ramasawmy Iyer* (1875), 8 Mad. H. C. 25; *Ramashchaya Panday v. Bhagavat Panday* (1868), 4 Mad. H. C. 5; *Booniadi Lall (Buksee) v. Dewkee Nundun Lall (Buksee)* (1873), 19 W. R. C. R. 223; *Kalee Sunkar Bhadooree v. Eshan Chunder Bhadooree* (1872), 17 W. R. C. R. 528; *Bona Kooree (Mussumat) v. Boolee Singh (Baboo)* (1867), 8 W. R. C. R. 182; *Shudanund Mohapattur v. Bonomalee Doss Mohapattur* (1866), 6 W. R. C. R. 256; *Purtab Bahadur Sing v.*

Tilukdharee Sing (1807), 1 Ben. Sel. K. 179 (new edition), 236.

⁴ *Shicopersad Sing v. Kullunder Sing* (1803), 1 Ben. Sel. R. 76 (2nd ed. 101).

⁵ *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. 63, at p. 71.

⁶ *Ramanna v. Venkata* (1888), 11 Mad. 246.

⁷ *Krishnasami Ayyangar v. Rajagopala Ayyangar* (1894), 18 Mad. 73, at p. 83. See *Shamnarain Singh v. Rughooburdial* (1877), 3 Calc. 508; 1 C. L. R. 343.

⁸ See *Shamnarain Singh v. Rughooburdial* (1877), 3 Calc. 508, at p. 510; 1 C. L. R. 343, at p. 345.

⁹ See *Rampershad Tewarry v. Sheo Churn Doss* (1866), 10 M. I. A. 490, at p. 505; *Ahmedbhoy Hubibbhoy v. Cassumbhoy Ahmedbhoy* (1889), 13 Bom. 534, at p. 545; Strange's "Hindu Law," i. 214.

¹⁰ *Jugmohandas Mangaldas v. Sir Mangaldas Nathubhoy* (1886), 10 Bom. 528, at pp. 558, 559; *Jadumani Dasi (Srinati) v. Gangadhar Seal*, Boul. 600; "Vyavastha Darpana," 2nd ed., p. 525; *Gooroo Churn v. Gooluckmoney*, Fulton (1843), 165, at p. 181; *Meenatchee v. Chidambra*, Mad. Dec. of 1853, p. 61.

"It seems agreed that maintenance in the family, during the period of separate acquisition, though it contribute to the end, is not alone sufficient to affect it with a joint character, the expenditure for the purpose being incidental."¹

It has been held that property acquired by a coparcener while drawing an income from coparcenary property is joint.²

As to property purchased from money acquired by the exercise of a profession, see *post*, p. 241.

Form of transfer.

The form of the transfer³ or the fact that the property was purchased or settled in the name of a particular member of the family⁴ is immaterial.⁵

Coparcenary as regards some coparceners only.

Property may be coparcenary as regards some members of a joint family, while other members of the family, although coparceners in the family property, have no share therein.⁶ Thus, if a coparcener dies leaving separate property,⁷ such property becomes the coparcenary property of his descendants, but his collateral coparceners have no interest therein.⁸

Endowed property.

The coparcenary may also be trustees of property devoted to religious or pious uses.⁹ This class of property is incapable of partition.¹⁰

SEPARATE PROPERTY.

Separate property.

It is competent to a member of a joint family to acquire property for himself independently of his coparceners. Such separate acquisitions can be dealt with at the pleasure of the acquirer.¹¹ In default of a will they pass to the heirs of the

¹ Strange's "Hindu Law," i. 214.

² *Rameshaiya Panday v. Bhagavat Panday* (1868), 4 Mad. H. C. 5. See *post*, p. 239.

³ See *In the goods of Pokurmull Augurwallah* (1896), 23 Calc. 980; 1 C. W. N. 31.

⁴ *Umrithnath Chowdhry v. Goureenath Chowdhry* (1870), 13 M. I. A. 542, at p. 547; 6 B. L. R. 232, at p. 241; 15 W. R. P. C. 10, at p. 11; *Bodh Sing Doodhoooria v. Gurnesh Chunder Sen* (1873), 12 B. L. R. 317; 19 W. R. C. R. 356.

⁵ See *post*, pp. 245, 246.

⁶ See *Shamnarin v. Court of Wards* (1873), 20 W. R. C. R. 197.

⁷ *Post*, p. 239.

⁸ See *ante*, p. 233.

⁹ See *Ramchandra Panda v. Ram*

Krishna Mahapatra (1906), 33 Calc. 507.

¹⁰ See *post*, p. 327.

¹¹ *Jugmohandas Mangaldas v. Sir Mangaldas Nathubhoy* (1886), 10 Bom. 528, at pp. 578, 580; *Muddun Gopal Thakoor v. Ram Buksh Pandey* (1863), 6 W. R. C. R. 71; *Sital v. Madho* (1877), 1 All. 394; *Narottam Jagjivan v. Narsandas Harikisandas* (1866), 3 Bom. H. C. A. C. J. 6; *Purshotam Shama Shenvi v. Vasudev Krishna Shenvi* (1871), 8 Bom. H. C. O. C. 196; *Bishen Perkash Narain Singh (Raja) v. Bawa Misser* (1873), 12 B. L. R. 430; 20 W. R. C. R. 137; S. C. in Court below, 10 W. R. C. R. 287; *Nana Narain Rao v. Huree Punth Bhao* (1862), 9 M. I. A. 96; Marsh. 436; *Nagalingam Pillai v. Ramachandra*

acquirer,¹ who will, in cases under the Mitakshara law, if he be a son, take them as coparcenary property.²

This applies to Nambudri Brahmins.³

As to separate property of a member of a *tarwad*, see *Govindan Nair v. Sankaran Nair* (1909), 32 Mad. 351.

As to the power of a father to divide his self-acquired property unequally amongst his sons, see *post*, p. 323.

Property acquired in the following ways is the absolute property of the acquirer. Other members of the family have no interest therein.⁴

(a) Property acquired by an individual member of the joint family by his own exertions,⁵ or from his separate capital, or on his own credit,⁶ without any help from, or detriment to, the coparcenary property,⁷ although he may have been maintained out of the proceeds of the family property.⁸

Where with comparatively small aid from the coparcenary property the separate acquisition of a distinct property is made by an individual member by his own labour or capital, the acquirer, according to the Bengal authorities, is entitled to a

Separate acquisitions.

Increased share.

Tevar (1901), 24 Mad. 429; *Rameshwar Prosad v. Lachmi Prosad Singh* (1903), 7 C. W. N. 688; *Gunnaiyan v. Kamakchi Ayyar* (1902), 26 Mad. 339, at p. 353; *Subbayya v. Surayya* (1887), 10 Mad. 251; *Gangabai v. Vamanaji* (1864), 2 Bom. H. C. (2nd ed.) 301. See *Hanmantapa v. Jivubai* (1900), 24 Bom. 547; 2 Bom. L. R. 478.

¹ *Katama Natchier v. The Rajah of Shivagunga* (1863), 9 M. I. A. 543, at p. 613; 9 W. R. P. C. 31, at p. 39; *Balwant Singh (Rao) v. Kishori (Rani)* (1898), 25 I. A. 54; 20 All. 267; 9 C. W. N. 273.

² *Chatturbhoof Meghji v. Dharamsi Naranji* (1384), 9 Bom. 438, at p. 450; *Ram Narain Singh (Rajah) v. Pertum Singh* (1873), 11 B. L. R. 397, at p. 404; 20 W. R. C. R. 189, at p. 191. *Ante*, p. 233.

³ *Vishnu Nambudri v. Akkamna* (1910), 34 Mad. 496.

⁴ See *Yamunabai v. Manubai* (1899), 23 Bom. 608, at p. 611; 1 Bom. L. R. 95. As to the Bengal school, see *ante*, p. 218.

⁵ *Tottempudi Venkataratnam v.*

Tottempudi Seshamma (1903), 27 Mad. 228; *Somasundara Mudaliar v. Ganga Bissen Soni* (1904), 28 Mad. 386 (income derived from Government service). This would not include exertions as manager, *Sheo Dyal Tewaree v. Judoonath Tewaree* (1868), 9 W. R. C. R. 61, at p. 64. As to earnings by a prostitute, see *Chandra-reka v. Secretary of State* (1890), 14 Mad. 163; *Boologam v. Swornam* (1881), 4 Mad. 330.

⁶ *Nursingh Dass (Rai) v. Narain Dass (Rai)* (1871), 3 N. W. P. H. C. 217, at p. 235. As to a policy of insurance, see *Rajamma v. Ramakrishnappa* (1905), 29 Mad. 121.

⁷ *Tottempudi Venkataratnam v. Tottempudi Seshamma* (1903), 27 Mad. 228; *Soobuns Lal v. Hurbuns Lal* (1805), 1 Ben. Sel. R. 91 (new ed. 121); *Purtab Bahadur Sing v. Tilukdharee Sing* (1807), 1 Ben. Sel. R. 179 (new ed. 236); *Koul Nath Singh v. Jagrup Singh* (1830), 5 Ben. Sel. R. 12 (new ed. 14).

⁸ See *Chabildas Lallubhai v. Ramdas Chabildas* (1909), 11 Bom. L. R. 606.

double share on partition,¹ no such share being given in case of the common stock being only improved or augmented.²

It has been suggested³ that the extra share allotted to the acquirer may be treated by him as self-acquired.

Whether this limitation will be accepted by the Judicial Committee or will be adopted in the other Provinces may be open to question.

Mr. Mayne⁴ says that the text of Vasishtha,⁵ on which it is founded, "probably applied originally to self-acquisition properly so called, and that it cut down the rights of a self-acquirer, instead of enlarging the rights of one who has made use of common property. The Smriti Chandrika and Madhaviya both restrict the text to the gains of learning, when considered to be partible in consequence of the education from which they sprung having been imparted at the expense of the family.⁶ The general principles laid down by Vijnanesvara seem to exclude the idea that any special and exclusive benefit can be obtained to any co-heir by a use of the family property.⁷ Mr. W. Macnaghten states that under Benares law no such benefit can be obtained, whatever may have been the personal exertions of any individuals, but that the rule did not exist in Bengal."⁸

Under the Bengal school of law the father takes a double share in acquisitions made by a son; if they have been made by the use of joint funds the father and the acquirer take two shares each, and the rest of the brothers one share each; but if made without the use of joint funds the acquisitions are divided half and half between the father and the son. A father claiming a share of property acquired by his son is not bound to allow the son any share of the ancestral property in his hands.⁹

¹ *Shco Dyal Tewaree v. Judoonath Tewaree* (1868), 9 W. R. C. R. 61, at p. 64; *Srce Narain Berah v. Gooro Pershad Berah* (1866), 6 W. R. C. R. 219; *Lal Chand Shaw v. Swarnamoye Das* (1909), 13 C. W. N. 1133; *Soorjeemoney Dossee (Sreemutty) v. Denobundoo Mullick* (judgment of Supreme Court, 1855), 6 M. l. A. 526, at p. 539; *Golab Chand v. Goluk Monee Dossee* (1843), Fulton, 165; *Jadumani v. Gangadhar Seal*, Boul. 600; "Vyavastha Darpana" (2nd ed.), 521; *Gudadhur Serma v. Ajodhearam Chowdry* (1794), 1 Ben. Sel. R. 8 (new ed. 7); *Koshul Chukurwutty v. Radhanath Chukurwutty* (1811), 1 Ben. Sel. R. 336 (new ed. 448); *Purtab Bahadur Sing v. Tilukharee Sing* (1807), 1 Ben. Sel. R. 179 (new ed. 236); *Kripa Sindhu Patjoshi v. Kanhaya Acharya* (1833), 5 Ben. Sel. R. 335 (new ed. 393); "Mitakshara," chap. i. s. 4, para. 29; "Dayabhaga," chap. ii. para. 41; chap. vi. s. 1, paras. 14, 28. See *ante*, p. 237.

² "Mitakshara," chap. i. s. 4, paras. 30, 31.

³ Bhattacharya's "Hindu Law," 2nd ed., p. 228. It cannot be said to have been acquired without detriment to the paternal estate: *ante*, p. 239.

⁴ "Hindu Law," 7th ed., p. 361.

⁵ "And if one of the brothers has gained something by his own effort, he shall receive a double share," "Vasishtha," xvii. 51; "Mitakshara," chap. i. s. 4, para. 29; "Dayabhaga," chap. vi. s. 1, paras. 27-29.

⁶ "Smriti Chandrika," chap. vii. para. 9, and see *utwah* in 2 William Macnaghten, 167.

⁷ "Mitakshara," chap. i. s. 4, paras. 1-6.

⁸ 1 Wm. Macnaghten, 52; 2 Wm. Macn. 7 n., 158, 160 n., 162 n.

⁹ *Wooma Soonduree Dossee v. Dwarka Nath Roy* (1868), 11 W. R. C. R. 72; *Dharma Das Kundu v. Amulyadhan Kundu* (1906), 33 Calc. 1119, at p. 1126; 10 C. W. N. 765.

This rule has no application when the son has separated from his father.¹

(b) Property acquired as "gains of science,"² i.e. by the practice of a (learned) profession or occupation, where the property of the family has not been used for acquiring such property, or in the special education, which was necessary for the purpose of practising such profession.³

A mere general education or maintenance, even during the time of the acquisition,⁴ at the expense of the family, would not, apparently, make the profits of the profession coparcenary property,⁵ but a special education for the particular profession would stand upon a different footing.

(c) Gifts on marriage⁶ or on other occasions,⁷ and bequests. Gifts and bequests.

In the latter case reliance was placed on the case of *Sreenarain Berah v. Gooro Pershad Berah* (1866), 6 W. R. C. R. 219, but the question of the father's right did not arise in that case. Macnaghten's "Hindu Law," vol. ii. pp. 163, 164; Sircar's "Vyavastha Darpana," 2nd ed., pp. 447-456; "Dayabhaga," chap. ii. para. 71.

¹ See *Anund Mohun Paul Chowdhry v. Shamasoondery* (Sreemutty), W. R. 1864, C. R. 352.

² "Manu," chap. ix. para. 206; "Narada Smriti," chap. ix. para. 6. The word which was translated by Colebrooke as "gains of science" is said to be literally "learning money," and to have meant money acquired by the teaching of the Vedas, K. K. Bhattacharya's "Joint Hindu Family," pp. 661-667.

³ See cases in note 4, post.

⁴ Strange's "Hindu Law," i. 214, 215; "Dayabhaga," chap. vi. s. 1, paras. 44-50. See *Durvasula Gangadharudu v. Durvasula Narasammah* (1872), 7 Mad. H. C. 47, at p. 49; *Chalakonda Alasani v. Chalakonda Ratnachalam* (1864), 2 Mad. H. C. 56, at p. 76; *Chellaperoomall v. Verraperoomall*, 4 Mad. Jur. 54, 240, referred to in Mayne's "Hindu Law," 7th ed., p. 355.

⁵ *Durga Dat Joshi v. Ganesh Dat Joshi* (1910), 32 All. 305 (earnings as

astrologer); *Laksman Mayaram v. Jannabai* (1882), 6 Bom. 225 (earnings in government employment); *Krishnaji Mahadev Mahajan v. Moro Mahadev Mahajan* (1890), 15 Bom. 32 (earning as Karkun [agent in financial or revenue collections]); *Dhunooldharee Lall v. Gunput Lall* (1868), 11 B. L. R. 201 note; 10 W. R. C. R. 122; *Valloo Chetty (Pauliem) v. Sooryah Chetty (Pauliem)* (1877), 4 L. A. 109, at pp. 117, 118; 1 Mad. 252, at pp. 261, 232; *Lachmin Kuar v. Debi Prasad* (1897), 20 All. 485 (a case of money earned as a commissariat officer); *Boologam v. Swornam* (1881), 4 Mad. 330 (where it was attempted to treat the earnings of a dancing-girl as joint property); *Manchha (Bai) v. Narotam Das*, (1868), 6 Bom. H. C. A. C. 1 (earnings as vakil); see *Durvasula Gangadharadu v. Durvasula Narasammah* (1872), 7 Mad. H. C. 47; *Avayambal v. Kamalambal*, 19 M. L. J. 65.

⁶ *Adhar Chandra Chatterjee v. Nobin Chandra Chatterjee* (1907), 12 C. W. N. 103; *Beharee Lall Roy v. Lall Chunder Roy* (1876), 25 W. R. C. R. 307.

⁷ See "Mitakshara," chap. i. s. 4, para. 2. "Manu" (chap. ix. para. 206) includes gifts presented as a mark of respect to a guest; "Narada" (chap. xiii. paras. 6, 7) includes gifts by father and mother,

The payment of the marriage expenses out of coparcenary property does not render the marriage gifts joint property.¹

As to *babuana* grants of ancestral property, see *ante*, p. 232.

As to gifts and bequests to a son in cases governed by the Mitakshara school of law, see *ante*, pp. 235, 236.

As to gifts and bequests to the joint family, see *ante*, p. 231.

Grants by
Government.

(d) Grants of property made by Government,² whether to a stranger or to a kinsman of a former owner of the land, unless it appears from the grant that it was to enure for the benefit of the family,³ or where the grantee has constituted himself a trustee for the family,⁴ or where there has been a family arrangement,⁵ or apparently where a family custom has treated them as joint.⁶

The quality of the estate in regard to its descendibility would not *prima facie*, be altered by the grant.⁷

Recovery of
lost property.

(e) Coparcenary property which had been lost to the family,⁸

¹ *Sheo Gobind v. Sham Narain Singh* (1875), 7 N. W. P. 75.

² *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 543, at p. 610; 2 W. R. P. C. 31, at p. 38; *Beer Pertab Sahee (Baboo) v. Rajender Pertab Sahee (Maharajah)* (1867), 12 M. I. A. 1, at p. 34; 9 W. R. P. C. 15, at p. 21. See *Raja Jee Bahadur Guru (Raja) v. Parthasaradhi Appa Row* (1902), 30 I. A. 14; 26 Mad. 202; 8 C. W. N. 105. See *Sookraj Koowar (Mussumat Thukrain) v. Government* (1871), 14 M. I. A. 112; *Hurpurshad v. Sheo Dyal* (1876), 3 I. A. 259; 26 W. R. C. R. 55; *Brij Indar Bahadur Singh v. Janki Koer (Ranee)* (1877), 5 I. A. 1; *Shere Bahadur Singh (Thakur) v. Dariao Kuar (Thakurain)* (1877), 3 Calc. 645. See *Jaganatha v. Ramabhadra* (1888), 11 Mad. 380; *Ram Nundun Singh v. Janki Koer (Maharaj)* (1902), 29 I. A. 178, at p. 193; 29 Calc. 828, at p. 851; 7 C. W. N. 57, at p. 72; 4 Bom. L. R. 664. As to a sale by Government of property which had been claimed as an escheat, see *Mallan v. Purushothama* (1889), 12 Mad. 287. As to the enfranchisement of an inam, see *Gunnaiyan v. Kamakchi Ayyar* (1902), 26 Mad. 339, and cases there cited; *Subbaraya Mudali v. Kamu Chetti*

(1899), 23 Mad. 47.

³ *Hurpurshad v. Sheo Dyal* (1876), 3 I. A. 259; 26 W. R. C. R. 55; *Govind Rao (Sri Mahant) v. Sita Ram Kesho* (1898), 25 I. A. 195; 21 All. 53; 2 C. W. N. 681. As where the grant merely operated as an ascertainment of the claim for revenue, and a release of the reversionary right of the Crown, *Narayana v. Chengalamma* (1886), 10 Mad. 1. See *Radhabai v. Nanarav* (1879), 3 Bom. 151.

⁴ See *Hardeo Buz (Thakoor) v. Juwahir Singh (Thakoor)* (1877), 4 I. A. 178; 3 Calc. 522; 6 I. A. 161; *Sookraj Koowar (Mussumat) Thukrain v. Government* (1871), 14 M. I. A. 112; *Shere Bahadur Singh (Thakur) v. Dariao Kuar (Thakurain)* (1877), 3 Calc. 645; *Ramanund Koer (Thakurain) v. Raghunath Koer (Thakurain)* (1881), 9 I. A. 41; 8 Calc. 769.

⁵ See *Kedar Nath (Maharaj) v. Ratan Singh (Thakur)* (1910), 37 I. A. 161; 32 All. 415; 14 C. W. N. 985; 12 Bom. L. R. 656.

⁶ See *Madharav Manohar v. Atmaram Keshav* (1890), 15 Bom. 519.

⁷ See *Venkata Narasimha Appa Row (Sri Rajah) v. Rangayya Appa Row (Sri Rajah)* (1905), 29 Mad. 437.

⁸ This does not apply to a case where the property was held by a

otherwise than by voluntary and valid alienation,¹ but recovered by an individual member without the aid of the family property² from a stranger holding adversely to the family.³

There must have been an express or implied abandonment of their rights by the coparceners, and the coparceners must have been in a position to sue.⁴

Where the property recovered under these conditions consists of land,⁵ the recoverer, except perhaps he be the father, is not entitled to the property absolutely, but he is entitled on partition to take one-fourth share as a reward for the recovery, and he has to share the remainder with his brethren.⁶

Where the recoverer is the father, the Mitakshara would apparently give him the whole of the property,⁷ but the Bengal authorities are said to make no distinction between a recovery by the father or one by another coparcener.⁸

The redemption of property is not a recovery within the meaning of this rule.⁹

person claiming to be a member of the family, *Bissessur Chuckerbutty v. Seetul Chunder Chuckerbutty* (1868), 9 W. R. C. R. 69; S. C. 8 W. R. C. R. 13.

¹ *Bajaba v. Trimbak Vishwanath* (1909), 34 Bom. 106; 11 Bom. L. R. 1122.

² "Yajnavalkya," Bk. ii. v. 119; "Mitakshara," chap. i. s. 5, para. 11; "Manu," chap. ix. para. 209; *Bolakee Sahoo v. Court of Wards* (1870), 14 W. R. C. R. 34; *Naraganti Achhammagaru v. Venkatachalapati Nayani-varu* (1881), 4 Mad. 250, at p. 259.

³ *Naraganti Achhammagaru v. Venkatachalapati Nayani-varu* (1881), 4 Mad. 250, at p. 259.

⁴ *Ibid.*, *Visalatchi Ammal v. Annasamy Sastry* (1870), 5 Mad. H. C. 150; *Juymohandas Mangaldas v. Sir Mangaldas Nathubhoy* (1886), 10 Bom. 528, at p. 551; *Shamnarain Singh v. Rughooburdial* (1877), 3 Calc. 508, at p. 511; 1 C. L. R. 343, at pp. 345, 346. See also *Bissessur Chuckerbutty v. Seetul Chunder Chuckerbutty* (1868), 9 W. R. C. R. 69; S. C. (1867), 8 W. R. C. R. 13.

⁵ K. K. Bhattacharya ("Law Relating to the Joint Hindu Family," p. 661) considers that this distinction

only applies to arable land.

⁶ "Mitakshara," chap. i. s. 4, para. 3; Colebrooke's "Digest," vol. iii. p. 365; "Daya-Krama Sangraha," chap. iv. s. 2, para. 9. See *Naraganti Achhammagaru v. Venkatachalapati Nayani-varu* (1881), 4 Mad. 250, at p. 259. Where the property is impartible, the recoverer would apparently be entitled to a reward. *Ibid.*, pp. 259, 260.

⁷ Chap. i. s. 5, para. 11.

⁸ Mayne's "Hindu Law" (7th ed.), pp. 360, 361, citing "Dayabhaga," chap. vi. s. 2, paras. 36-39; "Daya-Krama Sangraha," chap. iv. s. 2, paras. 7, 8; William Macnaghten, vol. i. 52; William Macnaghten, vol. ii. 157. With the exception perhaps of the statement in 1 William Macnaghten, these are authorities of the Bengal school, in which the distinction could not be made. In *Bolakee Sahoo v. Court of Wards* (1870), 14 W. R. C. R. 34, the right of the father to the whole was maintained, but the question as to his being entitled only to an extra share does not seem to have been raised.

⁹ *Visalatchi Ammal v. Annasamy Sastry* (1870), 5 Mad. H. C. 150.

The use of family money for the purpose of recovering such property does not necessarily make it joint.¹

Obstructed
heritage.

(f) In a case governed by the Mitakshara school of law, property inherited by obstructed inheritance (*Sapratibandha*),² i.e. from some person other than a natural or adopted father, father's father, or father's father's father.³

Property inherited by a single son from his mother would apparently not be coparcenary property, but the question is by no means clear.

As to property inherited by several sons, see *ante*, pp. 230, 231.

As pointed out by Mr. J. C. Ghose,⁴ according to the *Smritis* it is only in property derived from a paternal grandfather that the sons have equal rights with the father.

In *Karuppai Nachiar v. Sankanarayan Chetty* (1903), 27 Mad. 300, the Madras High Court held that sons inheriting from a mother took as tenants in common, but this is, it is submitted, not in accordance with the views of the Judicial Committee in *Venkayamma Garu (Raja Chelikani) v. Venkataramanayamma (Raja Chelikani)*, 29 I. A. 156; 25 Mad. 678; 7 C. W. N. 1; 4 Bom. L. R. 657, *ante*, p. 230.

As to property inherited from a maternal grandfather, see *ante*, pp. 232, 233.

Under the Bengal school, inherited property, from whomsoever it be inherited, is the separate property of a male heir.

Accretions
and proceeds.

(g) Accretions to separate property of any kind and savings therefrom, and property purchased with the income thereof, or from the proceeds thereof.⁵

Burden of
proof that
property
separate.

A member of a joint family claiming property as separate must show of what the separate property consists,⁶ and that it was his separate acquisition.⁷

¹ *Bachcho Kuwar v. Dharam Das* (1906), 28 All. 347.

² *Ante*, p. 233, note 6.

³ *Atar Singh v. Thakar Singh* (1908), 25 I. A. 206; 35 Calc. 1039; 12 C. W. N. 1049; 10 Bom. L. R. 790; *Gurumurthi Reddi v. Gurammal* (1908), 32 Mad. 88; *Timannacharyn v. Balacharya* (1903), 4 Bom. L. R. 457; *Nund Coomar Lall (Baboo) v. Razeeoddeen Hossein* (1872), 10 B. L. R. 183; 18 W. R. C. R. 477; *Nallalambi Chetti (Rayadur) v. Mukunda Chetti (Rayadur)* (1868), 3 Mad. H. C. 455; *Saminadha Pillai v. Thangathanni* (1895), 19 Mad. 70; *Lochun Singh v. Nemdharee Singh*

(1873), 20 W. R. C. R. 170; *Pitam Singh v. Ujagar Singh* (1878), 1 All. 651; *Jawahir Singh v. Guyan Singh* (1868), 3 Agra H. C. 78. See Ghose's "Hindu Law," 2nd ed., pp. 375, 376.

⁴ "Hindu Law," 2nd ed., p. 375, see "Mitakshara," chap. i. s. 4; and *Karuppai Nachiar v. Sankanarayan Chetty* (1903), 27 Mad. 300, at p. 307.

⁵ See *Booniaji Lall (Bukshree) v. Dewkee Nundun Lall (Bukshree)* (1873), 19 W. R. C. R. 223.

⁶ *Gane Bhive Parab v. Kane Bhive* (1867), 4 Bom. H. C. A. C. J. 169.

⁷ *Bipro Prosad Mytee v. Kenae Doyee* (1865), 3 W. R. C. R. 165; S. C. on remand, 5 W. R. C. R. 82.

As to the presumption with regard to the family being joint, see *ante*, pp. 214-217.

Property¹ purchased, either at a private sale or at a sale in execution of a decree of a Civil Court,² or held by or in the name of, or settled with³ a coparcener in a family which is joint in estate,⁴ is, if held in a manner not inconsistent with the property being joint, presumed, apart from special circumstances, to have belonged to the coparcenary at the time of its acquisition.⁵

There is no similar presumption in the case of property purchased by or in the name of dependent members of the family, who have no vested interest in the joint family, as, for instance, a son-in-law living in the house,⁶ a wife,⁷ under the Bengal school of law a son when the father is

¹ This includes money due on a bond, *Kalee Sunkur Bhadooree v. Eshan Chunder Bhadooree* (1872), 17 W. R. C. R. 528.

² *Hari Singh v. Sher Sing* (1909), 31 All. 282.

³ *Huro Soonduree Debia v. Doorga Doss Bhuttacharjee* (1871), 16 W. R. C. R. 265.

⁴ They may have separated in food or worship, *ante*, p. 215.

⁵ *Dhurm Das Pandey v. Shamasoondri Dibiah* (1843), 3 M. I. A. 229, at p. 240; 6 W. R. P. C. 43, at p. 44; *Prankishen Paul Chowdhry v. Mothooramohun Paul Chowdhry* (1865), 10 M. I. A. 403; 5 W. R. P. C. 11; *Bissessur Lall Sahoo v. Luchmeesur Singh (Maharajah)* (1879), 6 I. A. 233, at p. 236; 5 C. L. R. 477, at p. 479; *Cheetha (Mussumat) v. Miheen Lal (Baboo)* (1867), 11 M. I. A. 369; *Luziman Row Sadasow v. Mulla Row Bajee* (1831), 2 Knapp. 60; 5 W. R. P. C. 67; *Kanhia Lal v. Debi Das* (1899), 22 All. 141; *Yanumula Venkayama (Stree Rajah) v. Yanumula Boochia Vankondora (Stree Rajah)* (1870), 13 M. I. A. 333; 13 W. R. P. C. 4; *Bodh Sing Doodhooria v. Gunesch Chunder Sen* (1873), 12 B. L. R. 317, at p. 327; 19 W. R. C. R. 356, at p. 357; *Prannath Chowdhry v. Kashinath Roy Chowdhry*, W. R. 1864, C. R. 169; *Ramphul Singh v. Degnarain Singh* (1881), 8 Calc. 517; 10 C. L. R. 489; *Jugodumba Debia v. Rohinee Debia* (1875),

23 W. R. C. R. 422; *Heera Lal Roy v. Bidyadhar Roy* (1874), 21 W. R. C. R. 343; *Casumbhoy Ahmedbhoy v. Ahmedbhoy Hubibhoy* (1887), 12 Bom. 280, at p. 309; *Annundo Mohun Roy v. Lamb* (1862), Marsh. 169; 1 Hay, 374; *Hait Singh v. Dabee Singh* (1870), 2 N. W. P. 308; *Nursingh Dass (Rai) v. Narain Dass (Rai)* (1871), 3 N. W. P. 217; S. C. on appeal (1876), 26 W. R. C. R. 17; *Gopeekrist Gosain v. Gungapersaud Gosain* (1854), 6 M. I. A. 53; *Subbayya v. Surayya* (1887), 10 Mad. 251; *Subbayya v. Chellamma* (1886), 9 Mad. 477 (where waste lands were brought under cultivation); *Gopee Lal v. Bhugwan Doss (Mohunt)* (1869), 12 W. R. C. R. 7; *Narayan Deshpande v. Anaji Deshpande* (1880), 5 Bom. 130; *Nilmoney Bhooya v. Gunga Narain Shahur Roy* (1864), 1 W. R. C. R. 334. See *Balaram Bhaskarji v. Ramchandra Bhaskarji* (1898), 22 Bom. 922; *Shib Pershad Chuckerbutty v. Gunga Monee Debee* (1871), 16 W. R. C. R. 291; *Deela Singh v. Toofanee Singh* (1864), 1 W. R. C. R. 306; *Beharee Lal (Lalla) v. Modho Pershad (Lalla)* (1866), 6 W. R. C. R. 69.

⁶ *Dossee Monee Dossee v. Ram Chand Mohur* (1867), 7 W. R. C. R. 249.

⁷ *Chowdrani v. Tariny Kanth Lahiri Chowdry* (1882), 8 Calc. 545. This decision was reversed on the facts, *Dharani Kani Lahiri v. Kristokumari*

alive,¹ or a female member of the family ;² but where the property had been purchased by the managing members in such name the presumption might arise.³

"In the case of an ordinary Hindu family who are living together, or have their entire property in common, the presumption is that all that any one member of the family is found in possession of belongs to the common stock. That is the ordinary presumption, and the onus of establishing the contrary is thrown on the member of the family who disputes it."⁴

"The fact of the Hindu family is enough to put the purchaser upon inquiry, and if he deals with a single member without obtaining proof that the property is separate property he does so at his own risk."⁵

There has been some conflict as to whether it is necessary for the person claiming the property as joint to prove that there was a nucleus of family property from which the property in question might have been acquired, or whether mere proof that the acquirer was at the time of the acquisition a member of a Hindu family is not sufficient.⁶ Mr. Mayne⁷

Proof of
nucleus.

Chowdhry (1886), 13 I. A. 70; 13 Calc. 181. See *Bindoo Bashince Debee v. Pearer Mohun Bose* (1866), 6 W. R. C. R. 312.

¹ *Sarada Prosad Ray v. Mahananda Ray* (1904), 31 Calc. 448.

² *Narayana v. Krishna* (1884), 8 Mad. 214.

³ See *Chand Hurree Maitee v. Norendro Narain Roy (Rajah)* (1873), 19 W. R. C. R. 231. The purchase was made by the managing member in the name of the family priest.

⁴ *Bannoo v. Kashee Ram* (1877), 3 Calc. 315, at p. 317; *Sudanund Mohapattur v. Soorjo Monee Dayee* (1869), 11 W. R. C. R. 436. This presumption applies also to the case where the property has passed by sale into the hands of third parties and has been redeemed by private purchase by a coparcener; *Gooroo Pershad Roy v. Debee Pershad Tewaree* (1866), 6 W. R. C. R. 58.

⁵ *Shibooondery Dossee v. Rakhall Doss Sirkar* (1864), 1 W. R. C. R. 38.

⁶ The following cases assert that it is unnecessary to prove a nucleus: *Taruck Chunder Poddar v. Jodeshur Chunder Koondoo* (1873), 11 B. L. R. 193; 19 W. R. C. R. 178; *Gobind Chunder Mookerjee v. Doorgapersad Baboo* (1874), 14 B. L. R. 337; 22 W. R. C. R. 248; *Shushee Mohun*

Pal Chowdhry v. Aukhil Chunder Banerjee (1876), 25 W. R. C. R. 232; *Vedavalli v. Narayana* (1877), 2 Mad. 19; *Tara Churn Mookerjee v. Joynarain Mookerjee* (1867), 8 W. R. C. R. 226. In the following cases a different view was entertained: *Dwarkanprasad v. Jamnadas* (1910), 13 Bom. L. R. 133; *Bholanath Mahta v. Ajoodhia Persad Sookul* (1873), 12 B. L. R. 336; 20 W. R. C. R. 35; *Denonath Shaw v. Hurrinarain Shaw* (1873), 12 B. L. R. 349; *Kristo Chunder Kurmoker v. Rughoonath Kurmoker* (1873), 12 B. L. R. 352, note; *Hurish Chunder Doss v. Gourree Pershad Chatterjee* (1871), 16 W. R. C. R. 162; *Khilut Chunder Ghose v. Koonj Lall Dhur* (1868), 11 B. L. R. 194, note; 10 W. R. C. R. 333; *Radhika Prasad Dey v. Dharma Dasi Debi (Mussumat)* (1869), 3 B. L. R. A. C. 124; 11 W. R. C. R. 499. See *Pran Kristo Mojomdar v. Bhageerutee Gooplia (Sreemutty)* (1873), 20 W. R. C. R. 158; *Chundro Tara Deba v. Buksh Ali* (1869), 11 W. R. C. R. 305; *Hurish Chunder Mookerjee v. Mokhoda Debia* (1872), 17 W. R. C. R. 564; *Sudanund Mohapattur v. Soorjo Monee Dayee* (1869), 11 W. R. C. R. 436, at p. 438.

⁷ "Hindu Law," 7th ed., pp. 367, 368.

seeks to reconcile these decisions by pointing out how the burden of proof varies in accordance with the nature of the claim to separate property.

In a recent case the Allahabad High Court¹ has laid down that in Mitakshara cases proof of nucleus is necessary, but that none is necessary in cases governed by the Dayabhaga. The judges relied on the decision in *Sarada Prosad Ray v. Mahananda Ray* (1904), 31 Calc. 448, but in that case, which was governed by the Bengal school, the property was acquired during the lifetime of the father, and therefore there was no presumption that the property was joint.²

It is obvious that there may be joint property without a pre-existing nucleus.³

It is difficult, if not impossible, to lay down a rule which will suit the circumstances of each case, but every weight must be given to the practice of sharing property in common as members of a joint family which prevails among Hindus. It rarely happens that a case depends upon the mere necessity to prove the existence of a nucleus of family property.

When it is proved that there was family property, the fruits of which were capable of providing for the acquisition of the property in question, it is clear that the burden is upon the person who alleges that the property was a separate acquisition.⁴

The absence of a nucleus may be a factor of considerable importance for the purpose of determining a question as to whether property was a separate acquisition.⁵

The fact that the property had increased during a long period to a considerable value from a small nucleus of family property is not sufficient to rebut the presumption that it was all family property.⁶

The purchase of property in the name of one coparcener, or the use of his name in documents relating to the property,⁷ or the carrying on of law suits by him alone,⁸ or an entry of his

Use of name of individual member.

¹ *Govind Chandra Das v. Radha Kristo Das* (1909), 31 All. 477. See also *Ram Kishen Das v. Tunda Mal* (1911), 33 All. 677.

² *Ante*, p. 212.

³ See *Karsondas Dharamsey v. Gangabai* (1908), 32 Bom. 479; 10 Bom. L. R. 184; *Laldu Narandas v. Motibai* (1908), 10 Bom. L. R. 175; *ante*, p. 230 et seq.

⁴ *Lal Bahadur v. Kanhai Lal* (1907), 34 I. A. 65; 29 All. 244; 11 C. W. N. 417; 9 Bom. L. R. 597; *Anandrao Gunputrao v. Vasantrao Madhavrao* (1907), 34 Mad. 262, note; 11 C. W. N. 478; 9 Bom. L. R. 595. See *Tara Churn Mookerjee v. Joy-narain Mookerjee* (1867), 8 W. R. C. R. 226.

⁵ *Bhagubai v. Tukaram* (1905), 7 Bom. L. R. 169.

⁶ *Tottempudi Venkataratnam v. Tot-*

tempudi Seshamma (1903), 27 Mad. 228.

⁷ *Ante*, p. 245. *Dhurm Das Pandey v. Shama Soondri Dibiah* (1843), 3 M. I. A. 229, at p. 240; 6 W. R. P. C. 43, at p. 44; *Janokee Dassee v. Kisto Komul Singh* (1862), Marsh. 1; *Deela Singh v. Toofanee Singh* (1864), 1 W. R. C. R. 306; *Beharee Lal (Lalla) v. Modho Pershad (Lalla)* (1866), 6 W. R. C. R. 69; *Runjeet Singh v. Madud Ali* (1868), 3 Agra, 222; *Shibosoondery Dossee v. Rakhall Doss Sirkar* (1864), 1 W. R. C. R. 38; *Mun Mohinee Dabee v. Soodamonee Dabee* (1865), 3 W. R. C. R. 31. See *Umrithnath Chowdhry v. Gourreenath Chowdhry* (1870), 13 M. I. A. 542; 6 B. L. R. 232; 15 W. R. P. C. 10; *Vedavalli v. Narayana* (1877), 2 Mad. 19.

⁸ *Deela Singh v. Toofanee Singh* (1865), 1 W. R. C. R. 306.

name in revenue records,¹ does not by itself show that the acquisition was separate, or that there had been a separation, particularly where that member is the managing member of the family ; ² but where a purchaser from such member has been misled, the family may, in some cases, be estopped from claiming the property as joint,³ and in conjunction with other evidence of separation, or of separate acquisition, such evidence may be of importance.⁴

Rebuttal of
presumption.

The presumption may be rebutted by showing that the property has been self-acquired from separate funds, without the aid of the coparcenary property, and that the property is held separately,⁵ or by proof of separation before the acquisition, or by proof that at the time of acquisition there was no family property out of which it could have been acquired,⁶ or by proof of separation after the purchase, and exclusive possession of the property thereafter,⁷ or by proof of the assent of coparceners to the property being treated as separate.⁸

Evidence as to the source of the purchase-money is generally the most satisfactory mode of proof, but it is not indispensable.⁹

Where it is admitted or proved that property in dispute was not originally coparcenary property,¹⁰ or was not acquired by use of coparcenary funds,¹¹ or that a partition has already taken place,¹² the burden lies upon the person alleging the property to be joint.

¹ *Jussoondah v. Ajodhia Pershad* (1867), 2 Ind. Jur. N. S. 261. See *Rewa Prasad Sukal v. Deo Dutt Ram Sukal* (1899), 27 I. A. 39; 2 Calc. 515; 4 C. W. N. 582.

² *Kishen Komul Singh v. Janokee Dossee* (1862), W. R. Sp. No. 3; 1 Ind. Jur. O. S. 23.

³ See *Gour Chunder Biswas v. Greesh Chunder Biswas* (1867), 7 W. R. C. R. 120, at p. 122.

⁴ See *Bholanath Mahta v. Ajoodhia Persad Sookul* (1873), 12 B. L. R. 336; 20 W. R. C. R. 65; *Peary Lall v. Bhawool Koer* (1862), W. R. Sp. N. 18.

⁵ *Lokenath Surma v. Ooma Moyce Dabee* (1864), 1 W. R. C. R. 107.

⁶ See *Gunga Dhur Chatterjee v. Soorjo Nath Chatterjee* (1871), 15 W. R. C. R. 446.

⁷ *Bholanath Mahta v. Ajoodhia Persad Sookul* (1873), 12 B. L. R. 336; 20 W. R. C. R. 65.

⁸ See *Kallianji v. Bezonji*, 32 Bom. 512; 10 Bom. L. R. 754.

⁹ See *Dhurum Das Pandey v. Shama Sbondri Dibiah (Mussumat)* (1843), 3 M. I. A. 229; 6 W. R. P. C. 43; *Dhunookdharee Lall v. Gunput Lall* (1868), 11 B. L. R. 201, note; 10 W. R. C. R. 122; *Bholanath Mahta v. Ajoodhia Persad Sookul* (1873), 12 B. L. R. 336; 20 W. R. C. R. 85.

¹⁰ See *Atar Singh v. Thakar Singh* (1908), 35 I. A. 206; 35 Calc. 1039; 12 C. W. N. 1049; 10 Bom. L. R. 790.

¹¹ *Narayan Babaji v. Nana Manohar* (1870), 7 Bom. H. C. A. C. J. 153, at pp. 176, 177.

¹² *Ram Ghulam Singh v. Ram*

Where property was in its origin a separate acquisition of an individual member of the family, the burden of proving that it has become joint property, *i.e.* that its character has been changed by treatment,¹ is on the person making the assertion.²

There is no presumption that a family possesses any particular property,³ or any property at all.⁴ A person who claims a share in property as belonging to a joint family, of which he is admitted or has been proved to be a member, must prove either that the property was held or acquired by the members of the family as such,⁵ or that the person in whose possession it is is a member of the family.⁶

He may, of course, rebut evidence of self-acquisition by evidence as to the source of the acquisition, or by other evidence tending to show that the property was joint.

There is in India a considerable quantity of immovable property which is by custom impartible, in the sense that it always descends to a single heir.

In most cases such property is annexed to a *ruj*, or principality. or *Raj*, *palayam*. to a *palayam*,⁷ or to some other hereditary office; but a custom of descent according to the law of primogeniture may exist by *kolichir* or family custom, although the estate may not be a *raj* or *palayam*.⁸

Behari Singh (1895), 18 All. 90; *Narayan Babaji v. Nana Manohar* (1870), 7 Bom. H. C. A. C. J. 153, at pp. 176, 177; *Ram Gobind Koond v. Hossein Ali (Moulvie Syud)* (1867), 7 W. R. C. R. 90; *Vinayak Narasimh v. Datto Govind* (1900), 25 Bom. 367; *Prem Chund Dan v. Darimba Debia* (1871), 15 W. R. C. R. 238.

¹ *Ante*, p. 236.

² See *Venkataramanayamma Garu (Sri Raja Chelikani) v. Appa Rau Bahadur Garu* (1897), 20 Mad. 207, at p. 220. This decision was set aside on appeal (1902), 29 I. A. 156; 25 Mad. 678; 7 C. W. N. 1, but this dictum as to the burden of proof was untouched by the decision of the Judicial Committee.

³ See *Obhoy Churn Ghose v. Gobind Chunder Dey* (1882), 9 Calc. 237.

⁴ *Tooleseydas Ludha v. Premji Tricumdas* (1888), 13 Bom. 61, at p. 66; *Ramkishan Das v. Tunda Mal* (1911), 33 All. 677.

See *Nanubhai Ganpatrav Dhairyavan v. Achratbai* (1886), 12 Bom. 122, at p. 131.

⁵ See *Balaram Bhaskarji v. Ramchandra Bhaskarji* (1898), 22 Bom. 922, at p. 931; *Obhoy Churn Ghose v. Gobind Chunder Dey* (1882), 9 Calc. 237.

⁶ Cases, *ante*, p. 246, note 4, and p. 247, note 7. A different view was entertained in *Shiu Golum Sing v. Barun Sing* (1868), 1 B. L. R. A. C. 164, at p. 167, where it was said, "He must, at least, show that the defendants whom he sues constitute a joint family, and that the property in question became joint property when acquired, or that at some period since its acquisition, it has been enjoyed jointly by that family."

⁷ "A tract of country subject to a petty chieftain," Wilson's "Glossary," 391.

⁸ *Chintamun Singh (Choudhry) v. Nowlukho Konwari (Mussamut)*

A private individual cannot create an impartible estate,¹ or provide that it should always descend to a single heir.²

The following are instances where the custom of impartibility in the sense of the property being held by a single individual is to be found :—

Raj. (a) Zomindari, especially in the Madras Presidency, partaking of the nature of a Raj or sovereignty.³

Palayam. (b) Palayams (tracts of country governed by a Poligar or petty chieftain as a principality or Raj)⁴ in the Madras Presidency.⁵

An estate which is neither a Raj nor a Palayam may also by family custom be impartible.⁶

Grants by Government. (c) Saranjams⁷ or Jaghirs.⁸ Although Saranjams are *prima facie* impartible, they may be originally partible, or become so by family usage.⁹

Grants by Government, at any rate in the Southern Mahratta country, in the absence of any provision in the grant, or any custom would follow the ordinary rule of ancestral property,¹⁰ especially where they are granted for the maintenance of the family.¹¹ There is no presumption that grants to the holder of an office are impartible.¹²

As to the descent of jaghirs in the Punjab, see Act IV. (Punj. C.) of 1900.

Desai. It has been held that land held as appertaining to the office of *desai*, who was formerly the officer employed in the Mahratta country in

(1875), 2 I. A. 263; 1 Calc. 153; *Urjun Sing (Rawut) v. Ghunsiam Sing (Rawut)* (1851), 5 M. I. A. 169. See *Shyamanand Das Mohapatra v. Ramakanta Das Mohapatra* (1904), 32 Calc. 6 (reversed on the facts on appeal, *Rama Kanta Das Mahapatra v. Shamanand Das (Chowdhuri)* (1909), 36 I. A. 49; 36 Calc. 590; 13 C. W. N. 581; 11 Bom. L. R. 53); As to evidence of the custom of primogeniture, see *Mohesh Chunder Dhal v. Satrugan Dhal* (1902), 29 I. A. 62; 29 Calc. 343; 6 C. W. N. 459; 4 Bom. L. R. 372; *Rama Kanta Das Mahapatra v. Shamanand Das (Chowdhuri)* (1909), 36 I. A. 49; 36 Calc. 590; 13 C. W. N. 581; 11 Bom. L. R. 530.

¹ *Pirojshah v. Manibhai* (1911), 36 Bom. 53; 13 Bom. L. R. 963; see *post*, p. 507.

² *Post*, p. 506.

³ See *Gavuridevamma Garu (Sri Rajah Yenumala) v. Ramandora Garu (Sri Rajah Yenumala)* (1870), 6 Mad. H. C. 93, at p. 105. See cases in Norton L. C. pp. 478-480.

⁴ See Wilson's "Glossary," p. 391.

⁵ *Kachi Kaliyana Rengappa Kalakka Thola Udayar v. Kachi Yuva Rengappa Kalakka Thola Udayar* (1905), 32 I. A. 261; 28 Mad. 508; 10 C. W. N. 95; *Naragunty Lutchmeedavamah v.*

Vengama Naidoo (1861), 9 M. I. A. 66; 1 W. R. P. C. 30.

⁶ *Chintaman Singh (Chowdhry) v. Nowlukho Konwari (Mussamut)* (1875), 2 I. A. 263; 1 Calc. 153; *Shyamanand Das Mohapatra v. Rama Kanta Das Mohapatra* (1904), 32 Calc. 6; *Urjun Sing (Rawut) v. Ghunsiam Sing (Rawut)* (1851) 5 M. I. A. 169.

⁷ Grants generally of Revenue made by Maratha sovereigns, see Wilson's "Glossary," p. 465. *Narayan Jagannath Dikshit v. Vasudeo Vilhnu Dikshit* (1890), 15 Bom. 247; *Ramchandra Mantri v. Venkatrao* (1882), 6 Bom. 598.

⁸ Grants by the Sovereign, see *Nilmoni Singh (Rajah) v. Bakranath Singh* (1882), 9 I. A. 104; 9 Calc. 187.

⁹ *Madhavrav Manohar v. Atmaram Keshav* (1890), 15 Bom. 519. See *Gopal Hari v. Ramakant* (1896), 21 Bom. 458, at p. 460.

¹⁰ *Bodhrao Hunmont v. Nurning Rao* (1856), 6 M. I. A. 426; *Panchanadayyan v. Nilukandayyan* (1883), 7 Mad. 191.

¹¹ *Visvanadha Naick v. Bungaroo Teroomala Naick*, Mad. Dec. of 1851, 74. See cases in Norton's L. C. pp. 279, 478.

¹² *Sethuramaswamiar v. Meruswamiar* (1909), 34 Mad. 470.

superintending the collection of the Government revenues and other duties, is *primâ facie* partible.¹

There is similar authority with regard to the office of *deshpande*, an hereditary revenue accountant of a district or a certain number of villages,² and to the office of *deshmukh*, who is a district Revenue officer.³

On partition, however, the right of the officer to allowances for the performance of the duties of his office must be reserved.⁴

A mere arrangement for the convenient performance of the services of the officer is on a different footing from a custom.⁵

Where the services have been abolished, a family custom might still render the property impartible.⁶

The terms of the grant might, of course, create impartibility.⁷

The office of *Pattam*, an office of dignity in a family governed by the *Pattam*. Aliya Satana law, is impartible.⁸

(d) Service tenures, such as the *ghatwal*⁹ tenures in Manbhoom and Bheerbhoom,¹⁰ *digwari* tenures,¹¹ and those attached to village offices in Madras.¹²

"Hereditary offices, whether religious or secular, are treated by the Hindu law writers as naturally indivisible; but modern custom, whether or not it be strictly in accordance with ancient law, has sanctioned such partition as can be had of such property, by means of a performance of the duties of the office, and the enjoyment of the emoluments by the different coparceners in rotation."¹³

¹ *Adrishappa v. Gurushidappa* (1880), 7 I. A. 162; 4 Bom. 494; *Shidhojirav v. Naikojirav* (1873), 10 Bom. H. C. 228.

² *Ramrao Trimbak Deshpande v. Yeshwantrao Madhavrao Deshpande* (1885), 10 Bom. 327. In this case the custom of impartibility was established. See Steele, p. 229.

³ *Gopalrav v. Trimbakrav* (1886), 10 Bom. 598. In that case also the custom of impartibility was established.

⁴ *Adrishappa v. Gurushidappa* (1880), 7 I. A. 162; 4 Bom. 494. See Bom. Act III. of 1874, s. 8.

⁵ See *Gopalrav v. Trimbakrav* (1886), 10 Bom. 598.

⁶ *Radhabai v. Anantrav Bhagvant Deshpande* (1885), 9 Bom. 198; *Ramrao Trimbak Deshpande v. Yeshwantrao Madhavrao Deshpande* (1885), 10 Bom. 327.

⁷ See *Gopal Hari v. Ramakant* (1896), 21 Bom. 458, at p. 462.

⁸ *Timmappa Heggade v. Mahalinga Heggade* (1868), 4 Mad. H. C. 28.

⁹ "Lands granted either rent free or at a low rate of assessment to public ferrymen or to officers guarding passes in the hills. In Birbhum the lands were granted at a fixed

rate of assessment in perpetuity to the holders and their descendants, as long as the revenue is paid, although apparently no longer connected with the performance of any particular duty.—Reg. XXIX., 1814." Wilson's "Glossary," p. 173. See Baden Powell's "Land Systems of British India," vol. i. pp. 532, 582-587.

¹⁰ *Lelanund Sing Bahadoor (Raja) v. The Bengal Government* (1855), 6 M. I. A. 101, at p. 125; 1 W. R. P. C. 20; *Hurlall Singh v. Jorawun Singh* (1837), 6 Ben. Sel. R. 169 (new edition, 204). See *Nilmoni Singh (Rajah) v. Bakranath Singh* (1882), 9 I. A. 104; 9 Calc. 187; *Doorga Pershad Singh (Tekuet) v. Doorga Kooerte (Teketnee)* (1873), 20 W. R. C. R. 154.

¹¹ *Durga Prasad Singh (Sri Sri) v. Brajanath Bose*, decided by P. C. 21st February, 1912.

¹² *Alymalummaul v. Vencatoovien*, 2 Mad. Dec. 85, referred to in Mayne's "Hindu Law," 7th ed. 633; *Bada v. Hussu Bhai* (1883), 7 Mad. 236.

¹³ *Mancharam v. Pranshankar* (1882), 6 Bom. 298, at p. 299. As to priestly earnings, see Bhattacherya's "Law of the Joint Family," pp. 459-463; *Khedroo Ojha v. Deo*

(e) Grants made out of the revenues of an impartible estate for the maintenance of the junior members of the family and their direct male line (called in some parts of India *babuana* grants).¹ On the death of the last heir of the grantee these revert to the estate.

Discon-
tinuance.

There seems to be no reason why a custom of impartibility should not be discontinued.²

Savings from
impartible
estates.

Property purchased from the income of an impartible estate governed by the Mitakshara school of law, and the savings from the income of such estate not appropriated by the owner, or disposed of by his will, will form part of the estate.³

Not copar-
cenary
property.

Except that it may be liable for the maintenance of the younger members of the family,⁴ an impartible estate itself cannot be regarded as coparcenary property, inasmuch as by the custom of the family, it is held by a single individual.⁵

It is the exclusive property of the owner, subject to any custom restricting his powers of alienation, and no other member of the family has any joint interest in it.⁶

It was formerly considered that coparcenary property would include property which by custom is held and enjoyed by a single member of the family, but in which there was a right of survivorship.⁷

In a recent case in Bombay,⁸ Jenkins, C.J., said this: "No doubt

Ranee Koomar (Mussannut) (1866), 5 W. R. C. R. 222; *Becharam Banerjee v. Thakoormonee Debia (Sreemuttee)* (1868), 10 W. R. C. R. 114.

¹ *Durgadut Singh v. Rameshwar Singh Bahadur (Maharajah Sir)* (1909), 36 I. A. 176; 36 Calc. 943; 13 C. W. N. 1013; 11 Bom. L. R. 901. As to the alienation of such grants, see *ibid.*

² See *ante*, p. 26.

³ *Sarabjit Partap Bahadur Sahi v. Indarjit Partap Bahadur Sahi* (1904), 27 All. 203, at p. 252; *Rajeswara Gajapaty Naraina Deo Maharajulungaru (Sri Sri Sri Rajah) v. Virapratapah Rudra Gajapaty Naraina Deo Maharajulungaru (Sri Sri Sri)* (1869), 5 Mad. H. C. 31, at p. 41; *Kotta Ramasmi Chetti v. Bangari Seshama Nayanivar* (1881), 3 Mad. 145, at p. 150; *Parbati Kumari Debi (Srimati Rani) v. Jagudis Chunder Dhabal* (1902), 29 I. A. 82, at p. 98; 29 Calc. 433, at p. 453; 6 C. W. N. 490, at p. 495; 4 Bom. L. R. 365. As to the private property of a Sovereign

Prince, see *Secretary of State v. Kamachee Boye Sahaba* (1859), 7 M. I. A. 476, at p. 537; 4 W. R. P. C. 42, at p. 45; Strange's "Hindu Law," vol. ii. pp. 329, 330.

⁴ *Lalteshwar Singh v. Rameshwar Singh* (1909), 36 Calc. 481, at p. 483; 13 C. W. N. 838, at p. 841; see *Gur Pershad Singh v. Dhani Rai* (1910), 38 Calc. 182; 15 C. W. N. 49.

⁵ It was held otherwise in *Bawani Gfulam v. Deo Raj Kuari* (1883), 5 All. 542; but see below.

⁶ *Zamindar of Karvetnagar v. Doseji Varu (Sree Mahant)* (1909), 32 Mad. 429.

⁷ See *ante*, pp. 250, 251.

⁸ *Bachoo v. Mankorebai* (1904), 29 Bom. 51, at p. 57; 6 Bom. L. R. 268; S. C. on appeal, *Bachoo Harkisondas v. Mankorebai* (1907), 34 I. A. 107; 31 Bom. 373; 11 C. W. N. 769; 9 Bom. L. R. 646; see also *Rajah of Kalahasti v. Achigadu* (1905), 30 Mad. 454; *Zamindar of Karvetnagar v. Doseji Varu (Sree Mahant)* (1909), 32 Mad. 429.

the property claimed in *Raghunadha's* case¹ was impartible, but at one time it was the common notion that even in impartible property all the male members of a joint family were coparceners subject to the qualification that the enjoyment was by one member of the family alone, and it was considered, rightly or wrongly, that there was warrant for this view in a number of decisions of the Privy Council, and notably *Naraguntly v. Venganna*,² *Shivagunga* case,³ the *Tipperah* case,⁴ *Stree Rajah Yamanula Venkayamah v. Stree Rajah Yamanula Boochia Venkondara*,⁵ *Chowdhry Chintamun Singh v. Mussamut Nowlucko Konwari*.⁶ I mention these cases as to all of them Sir James Colville, who delivered the judgment in *Raghunadha's* case, was a party; and if it was his view that the impartible zemindari belonged to the whole family, then the decision in *Raghunadha's* case would seem to have proceeded on circumstances very closely resembling those with which we are now dealing. But whatever may have been the opinion that prevailed at that time, it has now been definitely decided by the Privy Council in *Rani Sartaj Kuari v. Rani Devraj Kuari*,⁷ and in *Sri Raja Rao Venkata Surya v. Court of Wards*,⁸ that in impartible properties there is no coparcenary, so that in the light of these latter decisions it cannot be said that the conditions in *Raghunadha's* case were in all respects identical with those now under consideration."

No question of separation in estate⁹ can arise in the case of an impartible Raj; as there is nothing upon which such separation can operate.¹⁰

If the owner of an estate, the devolution of which is governed by **Presumption.** family custom, acquires separate property, but does not in his lifetime alienate the property so acquired, or dispose of it by his will, or leave behind him some indication of a contrary intention, the reasonable presumption is that he intended to incorporate it with the estate.¹¹

According to the Madras High Court the successor to an impartible estate governed by the Mitakshara law cannot recover debts due to his predecessor without a certificate under Act VII. of 1889.¹² According to the Calcutta High Court he does not require a certificate.¹³ It is submitted that the latter view is correct.

As to inheritance to impartible property, see *post*, Chap. XVII.

¹ *Raghunada (Sri) v. Brozo Kishoro (Sri)* (1876), 3 I. A. 154; 1 Mad. 69.

² (1861), 9 M. I. A. 66, at p. 86^a; 1 W. R. P. C. 30.

³ (1863), 9 M. I. A. 543, at p. 589; 2 W. R. P. C. 31.

⁴ (1869), 12 M. I. A. 523, at p. 540; 3 B. L. R. P. C. 13.

⁵ (1870), 13 M. I. A. 333, at p. 339; 13 W. R. P. C. 21.

⁶ (1875), 2 I. A. 263, at pp. 269, 270; 1 Calc. 153.

⁷ (1888), 15 I. A. 51; 10 All. 272.

⁸ (1899), 26 I. A. 83; 22 Mad. 383; 3 C. W. N. 415; 1 Bom. L. R. 777.

⁹ *Post*, p. 310.

¹⁰ *Lalteshwar Singh v. Rameshwar Singh* (1909), 36 Calc. 481; 14 C. W. N. 49.

¹¹ *Sarabjit Partap Bahadur Sahi v. Indarjit Partap Bahadur Sahi* (1904), 27 All. 203, at p. 252. See observations of the Judicial Committee in *Parbati Kumari Debi (Srimati Rani) v. Jagadis Chunder Dhabal* (1902), 29 I. A. 82, at p. 98; 29 Calc. 433, at p. 453; 6 C. W. N. 490, at p. 495; 4 Bom. L. R. 365.

¹² *Rajah of Kalahasti v. Achigadu* (1905), 30 Mad. 454.

¹³ *Gur Pershad Singh v. Dhani Rai* (1910), 38 Calc. 182; 15 C. W. N. 49.

Alienation.

The holder of an impartible estate can, in the absence of a custom rendering it inalienable,¹ dispose thereof by will or transfer *inter vivos*, whether he be governed by the Mitakshara² or by the Bengal³ school of law.

As to the alienation of a *babudna* grant, see *Durgadut Singh v. Rameshwar Singh Bahadur (Maharajah)* (1909), 36 I. A. 176; 36 Calc. 943; 13 C. W. N. 1013; 11 Bom. L. R. 901.

A sale which took place at a time when the accepted interpretation of the law was that an impartible estate was inalienable was construed with reference to the law as it then stood.⁴

When the estate is inalienable, the holder can sell or charge it,⁵ in case of such a necessity as would justify the manager of an infant heir in a sale or charge.⁶

Madras Acts II. of 1902, II. of 1903, II. of 1904,⁷ and VI. of 1909, have rendered the holders of a large number of impartible estates in the Madras Presidency incapable of alienating or binding by their debts the estate except under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather of the other coparceners, to make an alienation of the joint property, or incur a debt, binding on the shares of the other coparceners independently of their consent.

Impartible property which has been sold does not retain its character of impartibility.

¹ *Sivasubramania Naicker v. Krishnammal* (1894), 18 Mad. 287.

² *Venkata Surya Mahipati Rama Krishna Rao Bahadur (Sri Raja Rao) v. Court of Wards* (1899), 26 I. A. 83; 22 Mad. 383; 3 C. W. N. 415; 1 Bom. L. R. 277; *Sartaj Kuari (Rani) v. Deoraj Kuari (Rani)* (1888), 15 I. A. 51; 10 All. 272; *Venkata Narasimha Naidu v. Bhashyakarl Naidu* (1899), 22 Mad. 538, upheld on appeal (1902), 29 I. A. 76; 25 Mad. 367; 6 C. W. N. 641; 4 Bom. L. R. 543; *Ram Das Marwari v. Braja Behari Singh (Tekait)* (1902), 6 C. W. N. 879; *Beresford v. Ramasubba* (1889), 13 Mad. 197; *Rup Singh v. Purbhu Narain Singh* (1898), 20 All. 537; *Kapilnauth Sahai Deo*

(*Thakoor*) v. *The Government* (1874), 13 B. L. R. 445, at pp. 458-460; 22 W. R. C. R. 17, at pp. 20, 21.

³ *Udaya Aditya Deb (Rajah) v. Jadub Lal Aditya Deb* (1881), 8 I. A. 248; 8 Calc. 199. S. C. in Court below, 5 Calc. 113; 4 C. L. R. 181; *Narain Khootia v. Lokenath Khootia* (1881), 7 Calc. 461; 9 C. L. R. 243.

⁴ *Abdul Aziz Khan Sahib v. Appayasami Naicker* (1903), 31 I. A. 1; 27 Mad. 131; 8 C. W. N. 186.

⁵ *Gopal Prosad Bhakat v. Raghunath Deb* (1904), 32 Calc. 158; 9 C. W. N. 330.

⁶ *Post*, pp. 275-277.

⁷ Sec. 4.

CHAPTER VII.

MANAGEMENT AND DISPOSAL OF PROPERTY OF JOINT FAMILY.

“ THE proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and there dealt with according to the mode of enjoyment by the members of an undivided family.” ¹

This principle was laid down in a case governed by the Mitakshara school of law, but it would apply also to a joint family governed by the Bengal school of law, it being remembered that in the latter case sons have not during their father's lifetime any interest in the family chest or purse.

Although a coparcener is not entitled ordinarily to credit for moneys paid by him out of his own funds for the benefit of the family on the improvement of the estate,² he is entitled to such credit where it is clear that he reserved his right to such credit, as where he paid the money to save the coparcenary estate from sale for arrears of Government revenue.³

Except where in a coparcenary governed by the Mitakshara the father has power to act independently of his sons,⁴ each coparcener must either himself, or by a manager having power in that behalf, be a party to every transaction relating to the coparcenary property.⁵

No coparcener, unless he be the manager, has power to enhance rent or eject tenants at his pleasure.⁶

It has been held⁷ that payment to one of several joint proprietors is a payment to all. This would, it is submitted, depend upon the circumstances. Where there is a manager a tenant would rarely be entitled to pay to any other coparcener. Under some circumstances a debtor

Application of proceeds of coparcenary property.

Payments on behalf of family.

All coparceners to be parties to transactions.

¹ *Appovier v. Rama Subba Ayyan* (1866), 11 M. I. A. 75, at p. 90; 8 W. R. P. C. 1.

² *Muttusvami Gaundan v. Subbiramanya Gaundan* (1863), 1 Mad. H. C. 309.

³ *Vizianagram (Rajah of) v. Setrucherla Somasekharadaz (Rajah)* (1903), 26 Mad. 686.

⁴ Viz. in contracting debts, *post*,

chap. viii.

⁵ See *Sangappa v. Sahabanna* (1870), 7 Bom. H. C. A. 141; *Ghunshyam Singh v. Runjeet Singh* (1865), 4 W. R., Act X. R. 39.

⁶ *Balaji Baikaji Pinge v. Gopal* (1873), 3 Bom. 23. See cases p. 256, note 9, and *post*, p. 257, note 1.

⁷ *Oodit Narain Singh v. Hudson* (1865), 2 W. R., Act X. R. 15.

might get a discharge by payment to one coparcener,¹ but it would ordinarily be safer for him to require a receipt from the manager or from the whole body of coparceners.

Parties to
suits.

Except that the manager of a joint family business can enforce at law the ordinary business contracts which he is entitled to make or discharge in his own name without making his coparceners parties to the suit,² and that where credit is given to an individual member he can sue alone,³ all the coparceners must be parties to a suit or execution proceedings relating to the coparcenary property,⁴ or to a trade or business belonging to the family,⁵ even if it be founded on a transaction which was validly entered into by the manager,⁶ but a decree made against the father⁷ or other manager, as representing the family, without any objection being made as to want of parties, may bind the other coparceners.⁸

Thus one coparcener cannot sue alone to eject a tenant,⁹ and cannot

¹ See *Gurushantappa v. Chanmalappa* (1899), 24 Bom. 123.

² *Kishen Parshad v. Har Narain Singh* (1911), 38 I. A. 45; 33 All. 272; 15 C. W. N. 321; 13 Bom. L. R. 359; differing from *Alagappa Chetti v. Velian Chetti* (1894), 18 Mad. 33; *Gopal Das v. Badri Nath* (1904), 27 All. 361; *Durga Prasad v. Damodar Das* (1909), 32 All. 183.

³ *Bando Subrao Jamnis v. Janbu Tavnappa Adake* (1910), 12 Bom. L. R. 801.

⁴ See Civil Procedure Code (Act V. of 1908), order i. rules 1, 3, 4; Act XIV. of 1882, ss. 26, 28. *Guruvayya Gouda v. Dattatraya Anant* (1903), 28 Bom. 11; *Vadilal Lallubhai v. Shah Khushal Dalpatram* (1902), 27 Bom. 157; *Muhammad Askari v. Rudhe Ram Singh* (1900), 22 All. 307; *Balkrishna Sakharan v. Moro Krishna Dabholkar* (1896), 21 Bom. 154; *Banarsi Das v. Maharani Kuar* (1882), 5 All. 27; *Phoolbas Koonwur (Mussumat) v. Juggeshur Sahoy* (1876), 3 I. A. 7, at p. 26; 1 Calc. 226, at pp. 243, 244; 25 W. R. C. R. 285, at p. 289; *Rajaram Tewari v. Lachman Prasad* (1869), 4 B. L. R. A. C. 118; 12 W. R. C. R. 478; *Gopal v. Macnaghten* (1881), 7 Calc. 751; *Unnoda Persad Roy v. Erskine*

(1873), 12 B. L. R. 370; 21 W. R. C. R. 68; *Nathuni Mahton v. Manraj Mahton* (1876), 2 Calc. 149; *Sheo Churn Narain Singh v. Chukraree Pershad Narain Singh* (1871), 15 W. R. C. R. 436; *Nundun Lall v. Lloyd* (1874), 22 W. R. C. R. 74; *Arunachala Pillai v. Vythialinga Mudaliyar* (1882), 6 Mad. 27; *Hari Gopal v. Gokaldas Kushabashet* (1887), 12 Bom. 158; *Naranji v. Moti* (1907), 9 Bom. L. R. 1126.

⁵ *Jugal Kishore v. Hulasi Ram* (1886), 8 All. 264; *Ramschuk v. Ramlall Koondoo* (1881), 6 Calc. 815; 8 C. L. R. 457. See *Vadilal Lallubhai v. Shah Khushal Dalpatram* (1902), 27 Bom. 157; *Anant Ram v. Channu Lal* (1903), 25 All. 378.

⁶ *Jas Ram v. Sher Singh* (1902), 25 All. 162. As to mortgages by the father, see *post*, pp. 294, 295.

⁷ See Civil Procedure Code (Act V. of 1908), order i. r. 13.

⁸ *Post*, p. 266.

⁹ *Reasut Hossein v. Chorwar Singh* (1881), 7 Calc. 470; 9 C. L. R. 260; *Sri Chand v. Nimchand Sahu* (1870), 5 B. L. R. App. 25; 13 W. R. C. R. 337; *Krishnarav Jahagirdar v. Govind Trimbak* (1875), 12 Bom. H. C. 85.

sue alone for enhancement of rent,¹ or for his share of the rent,² unless by an express or implied arrangement between the coparceners and the tenant he collects his share separately.³ He cannot sue alone for a debt.⁴

In *Ramayya v. Venkataratnam*,⁵ where a suit was brought by a manager as representative of the family, the Court considered that the omission to make the coparcener a party was a mere formal error.

When a coparcener declines to be a plaintiff,⁶ or where he is acting in collusion with the tenant⁷ or other person sued, he may be joined as a defendant.⁸

If the suit be barred against some of them, the whole suit fails.⁹

As to the effect of a decree in a suit by or against a manager, see *post*, p. 266. •

¹ *Jatindra Nath Chowdhri (Roy) v. Prasanna Kumar Banerji* (1910), 38 I. A. 1; 38 Calc. 270; 15 C. W. N. 74; 13 Bom. L. R. 1; *Jogendro Chunder Ghose v. Nobin Chunder Chottopadhyaya* (1882), 8 Calc. 353; *Balkrishna Sakharani v. Moro Krishna Dabholkar* (1896), 21 Bom. 154. As to a suit by a registered zemindar under Act VIII. (M. C.) of 1865, see *Ayyappa v. Venkata Krishnamarazu* (1892), 15 Mad. 484.

² *Bhyrub Mundul v. Gungaram Bonnerjee* (1872), 12 B. L. R. 290, note; 17 W. R. C. R. 408; *Hurkishor Das Bhooya v. Joogul Kishor Saha Roy* (1871), 12 B. L. R. 293, note; 16 W. R. C. R. 281; *Annoda Churn Roy v. Kally Coomar Roy* (1878), 4 Calc. 89; 2 C. L. R. 464.

³ *Gani Mahomed v. Doorga Proshad Mookerjee* (1878), 4 Calc. 98, 2 C. L. R. 370; *Ganga Narayan Das v. Sarodu Mohan Roy* (1869), 3 B. L. R. A. C. 12 W. R. C. R. 30; *Lootfulhuck*

Gopee Churn Mojomondar (1880), • 5 Calc. 941; 6 C. L. R. 402; *Doorga Churn Surma v. Jampa Dossee* (1873), 12 B. L. R. 289; 21 W. R. C. R. 46; *Rakkhal Chunder Roy Chowdhry v. Mahtab Khan* (1876), 25 W. R. C. R. 221; *Dinobundhoo Chowdhry v. Dinonath Mookerjee* (1873), 19 W. R. C. R. 168; *Shamrathi Singh v. Kishan Prasad* (1907), 29 All. 311; *Kashinath Chinnaji v. Chinnaji Sadashiv* (1906), 30 Bom. 477; 8 Bom. L. R. 268; *Haradhun Gossamee v. Ram Newaz Misry* (1872), 17 W. R. C. R. 414; *Salehoonissa Khattoon v. Mohesh Chunder Roy* (1872),

17 W. R. C. R. 452; *Sree Misser v. Crowdy* (1871), 15 W. R. C. R. 243.

⁴ *Shijiram v. Vishnu* (1900), 2 Bom. L. R. 121.

⁵ (1893), 17 Mad. 22, at pp. 126, 127.

⁶ *Rajaram Tewari v. Lachman Prasad* (1869), 4 B. L. R. A. C. 118; 12 W. R. C. R. 478; *Dwarkanath Mitter v. Taru Prosunna Roy* (1889), 17 Calc. 160; *Kali Chandra Singh v. Rajkishore Bhuldro* (1885), 11 Calc. 615; *Kattushiri Pisharath Kannu Pisharoddy v. Vallotil Manakel Narayanan Somayajipad* (1881), 3 Mad. 234; *Parameswaran v. Shangaran* (1891), 14 Mad. 489; *Juggodumba Doisee v. Haran Chunder Dutt* (1868), 10 W. R. C. R. 108; *Gokool Pershad v. Etwarree Mahto* (1873), 20 W. R. C. R. 138.

⁷ *Jadu Dass v. Sutherland* (1878), 4 Calc. 556; 3 C. L. R. 223; *Doorga Churn Surma v. Jampa Dassee* (1873), 12 B. L. R. 289; 21 W. R. C. R. 46. See, however, *Jadoo Shat v. Kadumbinee Dassee* (1881), 7 Calc. 150.

⁸ *Pramada Nath Roy (Raja) v. Ramani Kanta Roy (Raja)* (1907), 35 I. A. 73; 35 Calc. 331; 12 C. W. N. 249; 10 Bom. L. R. 66.

⁹ *Kalidas Kevaldas v. Nathu Bhagvan* (1883), 7 Bom. 217; *Shamrathi Singh v. Kishan Prasad* (1907), 29 All. 311; *Ramsebuk v. Rumlall Koondoo* (1881), 6 Calc. 815; 8 C. L. R. 457; *contra Labhu Ram v. Kanshi Ram* (1905), 76 P. L. R. Cf. *Ramdayal v. Junmenjoy Coondoo* (1887), 14 Calc. 791.

It has been held that where one of the family has entered into a contract in his own name he can enforce it alone.¹

Where he has been put in possession of a portion of the property by the others, he may be able to sue alone in respect of it.²

A coparcener can sue for damages for an act by which he is individually damaged.³

MANAGER.

Manager.

The property of a joint family is ordinarily managed by one of the coparceners who is entitled to possession of the family property as such manager.⁴ The father, if living, of a family governed by the Mitakshara school of law would be the manager.⁵ In other cases, the eldest male member of the family would ordinarily, but not necessarily, be selected.⁶

When the coparceners cannot agree as to the selection of a manager, a partition seems to be the only practical remedy.

In Bengal the manager is called the "*Karta*."

As to the management of a religious or charitable endowment, see *post*, pp. 526, 527.

The manager is not an ordinary agent of the family.⁷ He is thus described by Mr. Cowell⁸: "When, therefore, we come to define the relation of each member, especially of the managing member, to the joint family and the joint estate, we are brought into contact with a relationship which has no counterpart in English law. Neither the term 'partner,' nor 'principal,' nor 'agent,' nor even 'coparcener,' will strictly apply. He is, in fact, a sort of representative owner, his independent rights

¹ *Bungsee Singh v. Soodisht Lall* (1881), 7 Calc. 739; 10 C. L. R. 263; see *ante*, p. 256, note 2.

² *Amir Singh v. Moazzum Ali Khan* (1875), 7 N. W. P. 58.

³ *Gopee Kishen Gossain v. Ryland* (1868), 9 W. R. C. R. 279. As, for instance, a claim for mesne profits, *Chundee Chowdhry v. Macnaghten* (1875), 23 W. R. C. R. 386.

⁴ *Bhaskari Kasavarayudu v. Bhaskaram Chalapatirayudu* (1908), 31 Mad. 318.

⁵ See *Surja Prosad (Lala) v. Golab*

Chand (1900), 27 Calc. 724, at p. 743; 4 C. W. N. 701, at p. 711; *Gajindra Narain (Rai) v. Harihar Narain (Rai)* (1908), 12 C. W. N. 687.

⁶ See K. K. Bhattacharya's "Joint Hindu Family," pp. 209, 223. As to the disqualification of a father or, other manager, see *ibid.*, pp. 220, 221.

⁷ *Muhammad Askari v. Radhe Ram Singh* (1900), 22 All. 307, at pp. 317, 320.

⁸ "Tagore Law Lectures," 1870, p. 108.

being limited on all sides by the correlative rights of others, and burdened with a liability, coextensive with his ownership, to provide for the maintenance of the family."

In dealing with the same question, the Judicial Committee said,¹ "The relation of such persons is not that of principal, or agent, or of partners; it is much more like that of trustee and cestui que trust."

The manager is the *de facto* guardian of the interests of minor coparceners in the coparcenary property.²

Guardianship
of share in
joint family
property.

"A guardian of the property of an infant cannot properly be appointed in respect of the infant's interest in the property of an undivided Mitakshara family . . . on the plain ground that the interest of a member of such a family is not individual property at all, and that therefore a guardian, if appointed, would have nothing to do with the family property."³ These observations of the Judicial Committee would apparently apply also to the appointment of a guardian by a High Court.⁴ This principle does not apply when all the coparceners are minors and a guardian of the property is appointed of the whole number, but the order should reserve liberty to any minor on attaining majority to apply for removal of the guardian or restriction of his power.⁵

¹ *Annamalai Chetty v. Murugasu Chetty* (1903), 30 I. A. 220, at p. 228; 26 Mad. 544, at p. 553; 7 C. W. N. 754, at p. 765; 5 Bom. L. R. 494. See *Chuckun Lall Singh v. Poran Chunder Singh* (1868), 9 W. R. C. R. 483.

² As to his powers of sale, see *post*, pp. 271 *et seq.*

³ *Gharib-ul-lah v. Khalak Singh* (1903), 30 I. A. 165, at p. 170; 25 All. 407, at p. 416; 7 C. W. N. 681. 5 Bom. L. R. 478, at p. 687; *Bindaji Lazuman Tripitkar v. Mathurabai* (1905), 30 Bom. 152. See *Bandhu Prasad v. Dhiraji Kuar* (1898), 20 All. 400; *Virupakshappa v. Nilgangava* (1894), 19 Bom. 309; *Sham Kuar v. Mohanunda Sahoy* (1891), 19 Calc. 301; *Jhabbu Singh v. Ganga Bishan* (1895), 17 All. 529. In *Doorga Persad v. Kesho Persad Singh* (1882), 9 I. A. 27; 8 Calc. 656, it was taken for granted that a certificate under Act XL of 1858 could be given to a co-sharer. Cf. Act IV. of 1892, s. 2, Act I. (M. C.) of 1902, s. 17.

⁴ In *In re Manilal Hurgovan* (1900), 25 Bom. 353, the High Court of

Bombay, under its general jurisdiction, and apart from the Guardians and Wards Act, appointed a guardian of the interest of a minor in property held by a family governed by the Mitakshara school of Hindu law. In doing so the Court said (at p. 357), "But in coming to this conclusion we desire to add that it is a power to be exercised with the greatest caution. We make the appointment in this case because the person applying to be appointed the guardian is also the manager of the family to which the minor belongs, and thus we do not introduce into the family any element of possible disturbance. I can hardly imagine a case in which it would be right to grant such an appointment unless the applicant were the manager, and it is expressly upon this ground that we make the appointment in this case." See also *Jairam Luxmon* (1892), 16 Bom. 634; *Jagannath Ramji* (1893), 19 Bom. 96.

⁵ *Bindaji Lazuman Tripitkar v. Mathurabai* (1905), 30 Bom. 152.

Where the minor has separate property there would be no objection to the appointment of a guardian,¹ and in any case a guardian of his person can be appointed.²

Representa-
tion of
authority.

When the members of the family have represented that a member other than the manager is entitled to act as such, they are bound by his acts as much as if he had been *de jure* manager.³

Duty of
manager.

The duty of the father or other manager is to manage the property of the joint family for the benefit of such family as a whole ;⁴ to realize the income of the family property, pay the debts,⁵ and other outgoings connected with the management, and expend the residue for the benefit of the family and its members. He must provide for the maintenance, education, marriages, *sradhs*, and other usual religious expenses of the coparceners,⁶ and of such members of their family as they are, or were when alive, legally or morally bound to maintain,⁷ including their illegitimate sons when not coparceners,⁸ and also of persons disqualified from inheritance and their families.⁹ In expending money for the benefit of an individual member or his family, he need not take into account the share which such member would be entitled to on a partition.¹⁰

Provided he administers the property for the benefit of the family the manager is not bound to economize or save.¹¹

Discretion of
manager.

Where the discretion of the managing member is exercised *bonâ fide* and for the benefit of the estate, and the family have the benefit, such discretion should not be narrowly scrutinized.¹²

¹ See *Bandhu Prasad v. Dhiraji Kuar* (1898), 20 All. 400.

² *Virupakshappa v. Nilgangava* (1894), 19 Bom. 309.

³ See *Mudit Narayan Singh v. Ranglal Singh* (1902), 29 Cal. 797; *Krishna Ayyar v. Krishnasami Ayyar* (1900), 23 Mad. 597. Act I. of 1872, s. 115.

⁴ See *Bhowani Proshad Shahu v. Juggernath Shahu* (1909), 13 C. W. N. 309.

⁵ Where he cannot pay the debts out of income, he may have to alienate the property, see *post*, pp. 271 *et seq.*

⁶ *Ante*, p. 227.

⁷ As to widows, see *ante*, p. 83. As to the marriage of daughters, see *Vaikuntam Ammangar v. Kallapiran*

Ayyangar (1900), 23 Mad. 512.

⁸ *Ante*, pp. 220, 221.

⁹ *Ante*, p. 222. "Mitakshara," chap. ii. s. 10, paras. 12-14; "Dayabhaga," chap. v. paras. 10, 11; "Vyavahara Mayukha," chap. iv. s. 11, para. 10; "Dattaka Chandrika," s. 6, para. 2; K. K. Bhattacharya's "Law of the Joint Family," p. 295. A list of the persons entitled under the Rishi texts to maintenance, is to be found in R. C. Mitra's "Law of Joint Property," pp. 66-68.

¹⁰ See K. K. Bhattacharya, "Law of the Joint Hindu Family," p. 193.

¹¹ *Bhowani Proshad Shahu v. Juggernath Shahu* (1909), 13 C. W. N. 309.

¹² *Ratnam v. Govindarajulu* (1877), 2 Mad. 339, at p. 341.

In a suit for partition a coparcener can, it is submitted, require the manager to furnish an account of his dealings with the coparcenary property for the purpose of ascertaining the amount of the property to be partitioned. Account by manager.

This right was affirmed in *Damodardas Maneklal v. Uttamram Maneklal* (1892), 17 Bom. 271; but in *Bhowani Proshad Shahu v. Juggernath Shahu* (1909), 13 C. W. N. 309; *Balakrishna Iyer v. Muthusami Iyer* (1908), 32 Mad. 271, and *Narayan v. Rajaram* (1903), 28 Bom. 201, it was held that such right did not exist except in case of fraud or misrepresentation.

It is difficult to see how in the absence of such an account there can be a complete enquiry as to what the family property consists of at the time of the partition.

In the case of a partition between members who have been in possession of different portions there may be no such right to an account.¹

Although he does not seek for partition, a coparcener, who does not himself take part in the management of the property, may at any time by suit require the manager to account for his dealings with the family property,² but he is not entitled, while he remains undivided, to require any particular share of the profits to be made over to him.³

The cost of taking such account would probably not be on the same footing as the costs of an account, which is ancillary to partition. The Court would probably, unless default appeared in the manager's accounts, or unless the manager had declined to render any information to his coparceners, or where the person seeking the account was in possession of complete information as to the accounts, require the coparcener asking for an account to pay the costs. Where the account is ancillary to the partition, the costs would ordinarily be borne in proportion to the shares.

In furnishing such account, the managing member of a joint family is entitled to credit for all sums of money *bonâ fide* spent by him for the benefit of the joint family. He must be debited with all sums which he has actually misappropriated, or

¹ *Konerrav v. Gurav* (1881), 5 Bom. 589, as explained in *Damodardas Maneklal v. Uttamram Maneklal* (1892), 17 Bom. 271, at pp. 278, 279.

² *Abhaychandra Roy Chowdhry v. Pyari Mohan Guho* (1870), 5 B. L. R. 347; 13 W. R. F. B. R. 75; *Nowlaso Kooeree (Mussamat) v. Lalljee Modi* (1874), 22 W. R. C. R. 202.

³ See *Shudanund Mohapattur v.*

Bonomalee Doss Mohapattur (1866), 6 W. R. C. R. 256, at p. 259; *Ganpat v. Annaji* (1898), 23 Bom. 144; *Chuckun Lall Singh v. Poran Chunder Singh* (1868), 9 W. R. C. R. 483, as explained in *Abhaychandra Roy Chowdhry v. Pyari Mahan Guho* (1870), 5 B. L. R. 347, at pp. 354-356; 13 W. R. F. B. R. 75, at p. 70; *Nowlaso Kooeree (Mussamat) v. Lalljee Modi* (1874), 22 W. R. C. R. 202.

which he has spent for purposes other than those in which the joint family was interested.¹

"What that account should be, so as to discharge him from his liability to account as manager, and what objections the other members can take to it, must . . . depend on the conduct of the manager and the other members, the nature of the property, and the circumstances of the family, and cannot be satisfactorily stated in definite terms."²

"Of course no member of a joint Hindu family is liable to his coparceners for anything which might have been actually consumed by him in consequence of his having a larger family to support, or of his being subject to greater expenses than the others; but this is simply because all such expenses are justly considered to be the legitimate expenses of the whole family. Thus, for instance, one member of a joint Hindu family may have a larger number of daughters to marry than the others. The marriage of each of those daughters to a suitable bridegroom is an obligation incumbent upon the whole family so long as it continues to be joint, and the expenses incurred on account of such marriage must be necessarily borne by all the members without any reference whatever to respective interests in the family estate."³

Arrangement
as to manage-
ment.

It is competent to the members of the family to make a special arrangement as to the accountability of the manager,⁴ or as to the way in which the family is to be managed.

Separate
account of
expenditure.

By arrangement a manager may keep a separate account of expenditure on behalf of a particular member of the family, and on a partition such member may become liable for the amount appearing due on such account.⁵

A coparcener is not, except under special circumstances, entitled to ask for an account of a portion of the property only. Where a trading business forms a part of the assets of the joint family, one member cannot sue for an account of past profits and losses, apart from the accounts of the joint family.⁶

Powers of
manager.

The manager represents the family in transactions with outsiders.⁷ He has the ordinary powers incident to the due

¹ *Abhaychandra Roy Chowdhry v. Pyari Mohan Guho* (1870), 5 B. L. R. 347, at p. 349; 13 W. R. F. B. R. 75.

² *Damodardas Maneklal v. Uttamram Maneklal* (1892), 17 Bom. 271, at p. 279.

³ *Abhaychandra Roy Chowdhry v. Pyari Mohan Guho* (1870), 5 B. L. R. 347, at p. 349; 13 W. R. F. B. R. 75. See *Soorjeemoney Dossee (Sreemutty) v. Denobundoo Mullick* (1857), 6 M. I. A. 526, at p. 540. See *Ranganmani Dasi (S. M.) v. Kasinath Dutt* (1868), 3 B. L. R. O. C. 1, at p. 4, differed from on another point in *Abhaychandra Roy Chowdhry v. Pyarimohan Guho* (1870), 5 B. L. R. 347; 13

W. R. F. B. R. 75.

⁴ *Ramabhadra (Rajah Setrucherla) v. Virabhadra Suryanarayana (Rajah Setrucherla)* (1899), 26 I. A. 167; 22 Mad. 470; 3 C. W. N. 533; 1 Bom. L. R. 388. See *Shankar Baksh v. Hardeo Baksh* (1888), 16 I. A. 71; 16 Calc. 397.

⁵ *Soorjeemoney Dossee (Sreemutty) v. Denobundoo Mullick* (1857), 6 M. I. A. 526, at p. 540.

⁶ See *Samalbhair Nathubhai v. Someshvar* (1880), 5 Bom. 38, at p. 40.

⁷ See *Vithu Dhondi v. Babaji* (1908), 32 Bom. 375; 10 Bom. L. R. 505.

management of the property;¹ but he can act only with the assent, express or implied, of the body of coparceners.²

Where a portion of the family assets consists of a trade or other business, the manager, or other member of the family in charge of the business, has all the powers which are usually exercised by a person carrying on such business, and can bind the members of the family personally by debts properly incurred for the purposes of the business.³ He can make contracts, give receipts, and compromise, or discharge claims ordinarily incidental to the business.⁴

Minor members are only liable to the extent of the assets of the business, *i.e.* property which has been used by the family for the purposes of the trade, or which has been acquired out of the profits thereof.⁵

Some of the decisions make the interest of the minor in the whole family property liable,⁶ but the above limitation of liability is, it is submitted, correct.⁷

"A trade like other personal property is descendible amongst Hindus, but it does not follow that a Hindu infant, who by birth or inheritance becomes entitled to an interest in a joint family business, becomes at the same time a member of the trading partnership which carries on

¹ See *Kotta Ramasami Chetti v. Bangari Seshama Nayanivaru* (1881), 3 Mad. 145, at p. 150.

² *Chimnaji Govind Godbole v. Dinkar Dhondev Godbole* (1886), 11 Bom. 320, at p. 324.

³ *Ramlal Thakursidas v. Lakhmichand Muniram* (1861), 1 Bom. H. C. App. li.; *Samalbai Nathubhai v. Someshwar* (1880), 5 Bom. 38; *Sakrabhai Nathubhai v. Maganlal Mulchand* (1901), 26 Bom. 206; *Bemola Dossee v. Mohun Dossee* (1880), 5 Calc. 792; 6 C. L. R. 34; *Johurra Bibee v. Sree Gopal Misser* (1876), 1 Calc. 470; *Prem Chand Bauthra v. Radhica Lall Roy* (1877), 1 Shome, 1; *Joykisto Cowar v. Nittyanund Nundy* (1878), 3 Calc. 738; 2 C. L. R. 440; *Baldeo Sonar v. Mobarak Ali* (1902), 29 Calc. 583; 6 C. W. N. 370; *Sheo Pershad Singh v. Raj Kumar Lal* (1892), 20 Calc. 453; *Morrison v. Verschoyle* (1901), 6 C. W. N. 429, at p. 458; *Nagendra Chandra Dey v. Amar Chandra Kundu* (1903), 7 C. W. N. 725. *In the matter of Haroon Mahomed*

(1890), 14 Bom. 189; *Nunnu Setti v. Chidaraboyina* (1902), 26 Mad. 214; *Gokal Kastur v. Amarchand* (1907), 9 Bom. L. R. 1289.

⁴ *Kishen Parshad v. Har Narain Singh* (1911), 38 I. A. 45, at p. 51; 33 All. 272, at p. 276; 15 C. W. N. 321, at p. 326; 13 Bom. L. R. 359, at p. 365; *Raghunathji Tarachand v. Bank of Bombay* (1909), 34 Bom. 72; 11 Bom. L. R. 255.

⁵ See *Johurra Bibee v. Sree Gopal Misser* (1876), 1 Calc. 470; *Bishambhar Nath v. Sheo Narain* (1906), 29 All. 166; *Bishambhar Nath v. Fateh Lal* (1906), 29 All. 176; *Joykisto Cowar v. Nittyanund Nundy* (1878), 3 Calc. 738; 2 C. L. R. 440; *Gokal Kastur v. Amarchand* (1907), 9 Bom. L. R. 1289.

⁶ See *Bishambhar Nath v. Sheo Narain* (1906), 29 All. 166; *Gopal Kastur v. Amarchand* (1907), 9 Bom. L. R. 1289.

⁷ See *Joykisto Cowar v. Nittyanund Nundy* (1878), 3 Calc. 738; 2 C. L. R. 440.

the business. He can only become a member of the partnership by a consentient act on the part of himself and the partners."¹

The manager cannot start a new business so as to bind minor coparceners,² or adult coparceners who do not consent.

The fact that all the coparceners are partners in the business must, if disputed, be proved.³

Where the business is carried on by the manager on behalf of the family in partnership with a stranger, the death of the manager dissolves the partnership.⁴

Debts.

Where the manager has contracted debts for a proper joint family purpose, the coparcenary property is liable.⁵ The members of the family are liable to the extent of family property which has come to their hands, and if the manager or any other member of the family pays more than his share he can require the others to contribute.⁶

There is no presumption that the action of a manager in contracting debts, etc., is on behalf of the joint family,⁷ or that it is within his authority.⁸ /

Promissory notes.

It has been held that where the manager borrows money in his own name on promissory notes for the purpose of a joint family business, or to meet a joint family necessity, the creditor can recover the money from all the members of the family, although they were not all parties to the notes.⁹ It is submitted that no one but a party to a promissory note can be held liable thereunder,¹⁰ although the family may be liable for the debt. Where the note is given in the name of the firm, the partners are liable.¹¹

¹ *Lutchmanen Chetty v. Sivu Prokasa Modeliar* (1899), 26 Calc. 349, at p. 354; 3 C. W. N. 190, at pp. 192, 193; *Anant Ram v. Channu Lal* (1903), 25 All. 378.

² See *Makhun Lall Dutt v. Ramlall Shaw* (1898), 3 C. W. N. 134; *Morrison v. Verschoyle* (1901), 6 C. W. N. 429, at p. 458.

³ *Vadilal Lallubhai v. Shah Khushal Dalpatram* (1902), 27 Bom. 157; see *Baldeodas v. Manekchand* (1901), 3 Bom. L. R. 144.

⁴ *Sokkanadha Vannimundar v. Sokkanadha Vannimundar* (1904), 28 Mad. 344.

⁵ *Dwarka Nath Chowdhury v. Bungshi Chandra Saha* (1905), 9 C. W. N. 879.

⁶ See *Bimala Debi (Srimati) v. Tarasundari Debi (Srimati)* (1870), 6 B. L. R. App. 101; 14 W. R. C. R. 480; *Aghore Nath Mukhopdhyaya v.*

Grish Chunder Mukhopadhyaya (1892), 20 Calc. 18; *Baldeo Sonar v. Muburak Ali* (1902), 29 Calc. 583; 6 C. W. N. 370.

⁷ *Soiru Padmanabh Rangappa v. Narayanrao* (1893), 18 Bom. 520; *Krishna Ramaya Naik v. Vasudev Venkatesh Pai* (1896), 21 Bom. 808, at p. 815; *Sunkur Pershad v. Goury Pershad* (1879), 5 Calc. 321.

⁸ See *Nagendra Chandra Dey v. Amar Chandra Kundu* (1903), 7 C. W. N. 725.

⁹ *Baisnab Chandra De v. Ramdhon Dhor* (1906), 11 C. W. N. 139. See also *Nagendra Chandra Dey v. Amar Chandra Kundu* (1903), 7 C. W. N. 725; *Krishna Ayyar v. Krishnasami Ayyar* (1900), 23 Mad. 597.

¹⁰ See per Davies, J., in *Krishna Ayyar v. Krishnasami Ayyar* (1900), 23 Mad. 597, at p. 601.

¹¹ *Raghunathji Tarachand v. Bank*

Where the manager contracts a debt which is binding not only on the persons executing the contract but on the other members of the joint family to which he belongs, the creditor may elect to treat the debt as a personal debt, and sue the manager personally, or he may sue him as representative of the family,¹ or he may sue the whole family.

In the first case he can only realize his debt from the share of the manager ;² in the latter cases he can recover it from the family property.³

Although a manager may have power to deal with the property,⁴ he has no power to bind the other members of the family personally,⁵ except in the proper management of a family business.⁶

In the absence of fraud or collusion, the manager can bind the estate by a compromise,⁷ or by a reference to arbitration.⁸

He can pay interest on a debt, or can acknowledge one, so as to extend the period of limitation,⁹ but he has no power to pay or revive by acknowledgment a debt which is barred by limitation, except as against himself.¹⁰

A coparcener is entitled to have a contract made by the

of *Bombay* (1909), 34 Bom. 72 ; ¹¹ Bom. L. R. 255.

¹ *Jumona Persad Singh v. Dignarain Singh* (1883), 10 Calc. 1 ; 13 C. L. R. 74.

² See *post*, p. 270.

³ See *post*, p. 267.

⁴ *Post*, pp. 270 *et seq.*

⁵ *Chalamayya v. Varadayya* (1898), 22 Mad. 166 ; *Ranjit Sing v. Amullya Prosad Ghose* (1905), 9 C. W. N. 923 ; cf. *Wagehela Rajsanji v. Masludin (Shekh)* (1887), 14 I. A. 89 ; ¹¹ Bom. 551 ; *Indur Chunder Singh v. Radhakishore Ghose* (1892), 19 I. A. 90 ; 19 Calc. 507 ; *Ranmal Singji (Maharana Shri) v. Vadilal Vakhatchand* (1894), 20 Bom. 61 ; *Surendra Nath Sarkar v. Atul Chandra Roy* (1907), 34 Calc. 892 ; *Bhawul Sahu v. Baij Nath Pertab Narain Singh* (1907), 12 C. W. N. 256 ; *Gajindra Narain (Rai) v. Harihar Narain (Rai)* (1908), 12 C. W. N. 687. As to minors in *Bombay*, see Art. vii. (Bo. C.) of 1866, s. 5.

⁶ *Ante*, p. 263.

⁷ *Pitam Singh v. Ujagar Singh* (1878), 1 All. 651. As to a family arrangement made by the father, see *Ramdas v. Chabildas* (1910), 12 Bom. L. R. 621.

⁸ *Jagan Nath v. Mannu Lal* (1894), 16 All. 231 ; *Balaji v. Nana* (1903), 5 Bom. L. R. 95.

⁹ *Bhasker Tatya Shet v. Vijalal Nathu* (1892), 17 Bom. 512 ; *Chinnaya Nayudu v. Gurunatham Chetti* (1881), 5 Mad. 169 ; *Kumarasami Nadan v. Pada Nagappa Chetti* (1878), 1 Mad. 385 ; *Sarada Charan Chakravarti v. Durgaram De Sinha* (1910), 37 Calc. 461 ; 14 C. W. N. 741. As to the power of a father to bind his son, see *Narayanasami Chetti v. Samidas Mudali* (1883), 6 Mad. 293.

¹⁰ *Chinnaya Nayudu v. Gurunatham Chetti* (1881), 5 Mad. 169 ; *Dinkar v. Appaji* (1894), 20 Bom. 155 ; *Sobhanadri Appa Rau v. Sriramulu* (1893), 17 Mad. 221 ; *Gopalnarain Mozoomdar v. Muddomutty Guppte* (1874), 14 B. L. R. 21.

manager without authority or in fraud of the family rescinded.¹

Arrange-
ments.

A manager has power to make all necessary arrangements as to the mode of enjoyment of the joint property by the coparceners, as to their commensality, and as to their religious duties and observances.²

Where a son had taken possession of a portion of the coparcenary property against the will of his father, who was the manager, he was ejected.³

Decree against
manager.

The members of a family are all bound by a decree obtained *bond fide* against the father, or other manager, as such manager, for a debt duly incurred in the management of the property,⁴ whether it were or were not charged upon the family property, and by a sale of the family property in pursuance of such decree, or in a suit brought against the manager of a joint family business in respect of such business,⁵ or in any suit brought in respect of the family property,⁶ although they were not parties to the suit.⁷ When they are of age and acquiesce

¹ *Ravji Jamardan Sarangpani v. Gangadharbhat* (1897), 4 Bom. 29.

² *Raghunadha (Sri) v. Brozokishoro (Sri)* (1876), 3 I. A. 154, at p. 191; 1 Mad. 69, at p. 81; 25 W. R. C. R. 291, at p. 302. See *Romesh Chunder Bhuttacharjee v. Soorjo Coomar Bhuttacharjee* (1866), 5 W. R. C. R. 90.

³ *Baldeo Das v. Sham Lal* (1875), 1 All. 77. This was put upon the ground that the son had no independent dominion.

⁴ *Hanmanta v. Gopal* (1909), 11 Bom. L. R. 1145.

⁵ *Baldeo Sonar v. Mobarak Ali* (1902), 29 Calc. 583; 6 C. W. N. 370; *Sheo Pershad Singh v. Raj Kumar Lal* (1892), 20 Calc. 453; *Phulchand v. Lachmichand* (1882), 4 All. 486; see *ante*, p. 256.

⁶ As, for instance, a decree charging the family property with maintenance, *Minakshi v. Chinappa Udayan* (1901), 24 Mad. 689.

⁷ *Kunjan Chetti v. Sidda Pillai* (1898), 22 Mad. 461; *Jogendro Deb Roy Kul v. Funindro Deb Roy Kul* (1871), 14 M. I. A. 367, at p. 376;

11 B. L. R. 244, at p. 249; 17 W. R. C. R. 104, at p. 106; *Khizarajmal v. Daim* (1904), 32 I. A. 23, at p. 35; 32 Calc. 296, at p. 314; 9 C. W. N. 201, at p. 215; 7 Bom. L. R. 1; *Hari Vitthal v. Jairam Vitthal* (1890), 14 Bom. 597; *Doulut Ram v. Mehr Chand* (1887), 14 I. A. 187; 15 Calc. 70; *Bissessur Lall Sahoo v. Luchmessur Singh (Maharajah)* (1879), 6 I. A. 233; 5 C. L. R. 477; *Baldeo Sonar v. Mobarak Ali* (1902), 29 Calc. 583; 6 C. W. N. 370; *Ram Sevak Das v. Raghubar Rai* (1880), 3 All. 72; *Jeo Lal Singh v. Gunga Pershad* (1884), 10 Calc. 996; *Sakharam v. Devji* (1898), 23 Bom. 372; *Bhana v. Chindhu* (1896), 21 Bom. 616; *Krishnama v. Perumal* (1885), 8 Mad. 388; *Gan Savant Bal Savant v. Narayan Dhond Savant* (1883), 7 Bom. 467; *Gajindar Narain (Rai) v. Haribai Narain (Rai)* (1908), 12 C. W. N. 687; *Magniram v. Tukaram* (1900), 2 Bom. L. R. 197; *Jaddo Kunwar v. Sheo Shankar Ram* (1910), 33 All. 71. See *Subramaniyayyan v. Subramaniyayyan* (1882), 5 Mad. 125.

in the conduct of the suit by their father, or other manager, the coparceners would the more clearly be bound by the decree.¹

If a manager (with the acquiescence, express or implied, of the adult members of the family,) bring a suit on behalf of the family, and no objection be made by the defendant, a decree can be made; but a defendant may insist that the other members of the family be brought on the record,² unless the suit be brought in respect of a contract made by the managers of a family business, and all the persons who contracted with him are parties to the suit.³

In *Kashinath Chimnaji v. Chimnaji Sadashiv*,⁴ Scott, J., sitting on the Original side of the Bombay High Court, said, "As a matter of practice suits are not filed in this Court⁵ by managers representing their infant coparceners; the practice is to join all parties interested, but it would seem that even if in the face of the plaint there was an allegation of a sole plaintiff that he sued as manager on behalf of a coparcenary, the minor coparcener would not be bound by proceedings, unless by judicial sale under the decree rights had been created in third parties, and no prejudice were shown to the absent minors."

As to parties to suits, see *ante*, p. 256.

All members of a family are bound by decrees in suits brought by the manager of a joint family business as such, even though they are not parties to the suit;⁶ but in a suit brought by such manager the defendant may insist upon all the members of the family who are members of the partnership being brought upon the record,⁷ except where the suit is brought upon a contract made by the manager in his own name.⁸

Minor members of the family who have not by a consentient act

¹ See *Kunjan Chetti v. Sidda Pillai* (1899), 22 Mad. 461.

² See *Guruvayya Gouda v. Dattatraya Awant*, 28 Bom. 11; *Thakurmani Singh v. Dai Rani Koeri* (1906), 33 Calc. 1079; *Angamuthu Pillai v. Kolandavelu Pillai* (1899), 23 Mad. 190; *Gan Savant Bal Savant v. Narayan Dhond Savant* (1883), 7 Bom. 467; *ante*, p. 256. See, however, *Vithu Dhondi v. Babaji* (1908), 32 Bom. 375; 10 Bom. L. R. 505.

³ *Ante*, p. 256.

⁴ (1906), 30 Bom. 477, at p. 486; 8 Bom. L. R. 268. See, however, *Bissessur Lall Sahoo v. Luchmessur Singh (Maharajah)* (1879), 6 I. A. 233, at p. 237; 5 C. L. R. 477, at p. 480,

and cases *ante*, p. 266, note 7.

⁵ The practice is the same on the Original side of the Bengal High Court.

⁶ *Baldeo Sonar v. Mobarak Ali Khan* (1902), 29 Calc. 583; 6 C. W. N. 370; *ante*, p. 256. See *Sundar Lal v. Chhitar Mal* (1906), 29 All. 1, where it was held that the dismissal of a suit for redemption brought by the father did not bar the sons.

⁷ *Shamrathi Singh v. Kishan Prasad* (1907), 29 All. 311. See *Alagappa Chetti v. Vellian Chetti* (1894), 18 Mad. 33; *Lutchmanen Chetty v. Sivaprokasa Modeliar* (1899), 26 Calc. 349; 3 C. W. N. 190; *ante*, p. 256.

⁸ *Ante*, p. 256.

become members of the partnership are not necessary parties to the suit.¹

Suit on
mortgage.

There was a conflict of decisions as to whether, in a suit on a mortgage instituted under the Transfer of Property Act,² any but the actual parties are bound.

The decisions deal with mortgages created by the father of a Mitakshara family,³ but they are equally applicable to a mortgage by any other manager. The cases before the passing of that Act determined that sons who were joint with their father,⁴ were liable if the suit was brought against their father as representing the family, i.e., himself and his sons.⁵

In each case it was a question whether the decree was intended to bind the family, and whether in execution their interests passed by the sale.⁶ It did not follow from the mere fact that the interest purporting to be sold was the right title and interest of the father that the entire interest which he had authority to deal with did not pass.⁷

If, however, the decree from the form of the suit, the character of the debt recovered by it and its terms was to be interpreted as a decree against the father alone and personal to himself, and all that was put up and sold thereunder in execution was his right and interest in the joint ancestral estate, then the auction purchaser acquired no more than that right and interest, i.e. the right to demand partition.⁸

Where the mortgage charged the whole interests, the form of mortgage

¹ *Lutchmanen Chetty v. Sivaprokasu Modeliar* (1899), 26 Cal. 349; 3 C. W. N. 190.

² IV. of 1882.

³ *Post*, p. 269.

⁴ See *Trimbak Balkrishna v. Narayan Damodhar Dabholkar* (1884), 8 Bom. 481.

⁵ *Ponnappa Pillai v. Pappuvayyengar* (1881), 4 Mad. 1; S. C. (1885), 9 Mad. 343; *Srinivasa Nayudu v. Yelaya Nayudu* (1882), 5 Mad. 251; *Sadashiv Dinkar Joshi v. Dinkar Narayan Joshi* (1882), 6 Bom. 520; *Studd v. Brij Nundun Pershad Singh* (1881), 9 C. L. R. 350; *Sundraraja Ayyangar v. Jaganada Pillai* (1881), 4 Mad. 111; *Doulut Ram v. Mehr Chand* (1887), 14 I. A. 187; 15 Cal. 70; *Deva Singh v. Rai Manohar* (1880), 2 All. 746; *Ram Sevak Das v. Raghubar Rai* (1880), 3 All. 72; *Gayadin v. Raj Bansi Kuar* (1880), 3 All. 191; *Ram Narain Lal v. Bhawani Prasad* (1881), 3 All. 443; *Parsidh Narain Singh v. Hunoman Sahai* (1881), 11 C. L. R. 263.

⁶ See *Pemraj Chandra Bhat v. Savalya Gajaba* (1890), 15 Bom. 293;

Doulut Ram v. Mehr Chand (1887), 14 I. A. 187; 15 Cal. 70; *Ram Narain Lal v. Bhawani Prasad* (1881), 3 All. 443.

⁷ See *post*, pp. 304, 305. *Mahabir Pershad (Rai Babu) v. Markunda Nath Sahai (Rai)* (1889), 17 I. A. 11, at p. 16; S. C. *nomine Mahabir Pershad v. Moheswar Nath Sahai* 17 Cal. 584, at p. 589; *Bhagbut Pershad v. Girja Koer (Mussumat)* (1888), 15 I. A. 99; 15 Cal. 717; *Trimbak Balkrishna v. Narayan Damodar Dabholkar* (1884), 8 Bom. 481, at p. 486; *Ponnappa Pillai v. Pappuvayyengar* (1881), 4 Mad. 1, at p. 15; *Hardai Narain v. Haruck Dhari Singh* (1882), 12 C. L. R. 104; *Sadashiv Dinkar Joshi v. Dinkar Narayan Joshi* (1882), 6 Bom. 520; *Gnanammal v. Muthusami* (1889), 13 Mad. 47. In *Nanhak Joti v. Jaimangal Chaubey* (1880), 3 All. 294, the sale was expressly limited to the father's interest. See cases, *post*, p. 305, note 2.

⁸ *Basa Mal v. Maharaj Singh* (1886), 8 All. 205; *Simbhunath Panday v. Golab Singh* (1887), 14 I. A. 77; 14 Cal. 572.

decree now adopted by the Indian Courts would be sufficient to cause a sale of all of such interest.¹

Section 85 of the Transfer of Property Act enacted as follows :

Suits for Foreclosure, Sale, or Redemption.

"Subject to the provisions of the Code of Civil Procedure, sec. 437,² all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage : Provided that the plaintiff has notice of such interest."

The Bengal High Court³ has held that, where the plaintiff had notice of their existence,⁴ the sons can sue to set aside a decree to which they are not parties. In the Allahabad High Court earlier decisions⁵ and the latest decision⁶ differ from the Bengal view, but there is a decision to the contrary.⁷ The Allahabad Court has declined to extend the principle of the Bengal decisions to cases where the property has been sold to a purchaser other than the judgment creditor.⁸ The result of the Bengal view would be that a new suit against the sons is necessary, and in such new suit the debt can be recovered by sale of the coparcenary property.⁹ The Madras¹⁰ and Bombay¹¹ High Courts consider that the law in this respect was not altered by the Transfer of Property Act.

A decree on a mortgage is equally binding when the manager happens to have been appointed as guardian by the Court, but has obtained no sanction from the Court.¹²

An appeal by the manager as representative of the family is on the same footing as a suit brought by him.¹³

¹ See Act V. of 1908, Sched. I., App. D. 4.

² That section dealt with suits concerning property vested in a trustee, executor, or administrator, and has therefore no application to the present question.

³ *Suraj Prasad (Lala) v. Golab Chand* (1901), 28 Calc. 517 ; 5 C. W. N. 640, reversing decision of Ghose, J. (1900), 27 Calc. 724 ; 4 C. W. N. 701.

⁴ The burden of proving this is upon the sons : *Ram Nath Rai v. Lachman Rai* (1899), 21 All. 193.

⁵ See cases referred to in *Bulwant Singh v. Aman Singh* (1910), 33 All. 7.

⁶ *Bulwant Singh v. Aman Singh* (1910), 33 All. 7.

⁷ *Ram Prasad v. Man Mohun* (1908), 30 All. 257.

⁸ *Debi Singh v. Jia Ram* (1902), 25 All. 214 ; *Lal Singh v. Pulandar Singh* (1905), 28 All. 182.

⁹ *Dharam Singh v. Angal Lal* (1899), 21 All. 301 ; *Lachman Das v. Dattu* (1900), 22 All. 394. See

Ram Singh v. Sobha Ram (1907), 29 All. 544. In *Suraj Prasad (Lala) v. Golab Chand* (1901), 28 Calc. 517 ; 5 C. W. N. 640 ; and *Kanhaya Lal v. Raj Bahadur* (1902), 24 All. 211, the son in the suit brought by him had an opportunity of contesting the mortgage, so the Court declined to give him any remedy, except a right to redeem.

¹⁰ *Ramasamayyan v. Virasami Ayyar* (1898), 21 Mad. 222 ; *Palani Goundan v. Rangayya Goundan* (1898), 22 Mad. 207.

¹¹ *Ramkrishnu v. Vinayak Narayan* (1910), 34 Bom. 354 ; 12 Bom. L. R. 219 ; *Chimna v. Sada* (1910), 12 Bom. L. R. 811 ; *Tatyarao v. Puttapa* (1910), 12 Bom. L. R. 940.

¹² *Ram Avtar Singh v. Nursing Narain Singh*, 3 C. L. J. 12. See *Gharib-ul-lah v. Khalak Singh* (1903), 30 I. A. 165 ; 25 All. 407 ; 7 C. W. N. 621 ; 5 Bom. L. R. 478.

¹³ See *Jutadhari Lal v. Rughoobeer Persad* (1883), 9 Calc. 508 ; 12 C. L. R. 255.

When a suit on a mortgage or other contract has been brought against the manager, it has been held that there is nothing to prevent another suit against the other members of the family on the same cause of action.¹

The present law on the subject is to be found in Schedule I., Order XXXIV., rule 1 of the Civil Procedure Code (Act V. of 1908) which is as follows :—

“ Subject to the provisions of this Code, all persons having an interest either in the mortgage security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.”

This does not completely clear up the difficulties created by the decisions under section 85 of the Transfer of Property Act,² but it is submitted that, as all the coparceners have an interest in the right of redemption, they should be made parties.

Vesting order. A coparcener is not bound by a vesting order made under the Insolvency law, unless he was himself declared an insolvent.³

A decree, even for a joint family debt, in a suit by or against the manager alone, and not as representing the family, does not bind his coparceners,⁴ and cannot be executed against the coparcenary property.⁵ If a sale takes place in execution of such decree the interest of the defendant alone passes thereby.⁶

ALIENATION AND CHARGE.

Alienation by coparcenary.

Where all the coparceners are adults they can together effect a valid sale or charge of the coparcenary property.⁷ A sale or charge can also be made by the adult coparceners, and

¹ *Muhammad Askari v. Radhe Ram Singh* (1900), 22 All. 307.

² *Ante*, pp. 268, 269.

³ See *Nunna Setti v. Chidaraboyina* (1902), 26 Mad. 214.

⁴ See *Sundar Lal v. Chhitar Mal* (1906), 29 All. 1; S. C. *ibid.*, p. 215.

⁵ *Dwarka Nath Chowdhury v. Bungshi Chandra Saha* (1905), 9 C. W. N. 879.

⁶ *Armugam Pillai v. Sabapathi Padiachi* (1882), 5 Mad. 12; *Subramaniyayyan v. Subramaniyayyan* (1882), 5 Mad. 125; *Viragavamma*

v. Sanundrala (1885), 8 Mad. 208; followed in *Abilak Roy v. Rubbi Roy* (1885), 11 Calc. 293; *Guruvappa v. Thimma* (1887), 10 Mad. 316; *Maruti Narayan v. Lilachand* (1882), 6 Bom. 564; *Ksiansing Jivansing Pardesi v. Moreswar Vishnu Joshi* (1882), 7 Bom. 91; *Dasaradhi Ravulo v. Jodumoni Ravulo* (1882), 5 Mad. 193; *Babaji v. Dhuri* (1884), 9 Bom. 305. See *post*, pp. 304, 305.

⁷ *Mahabeer Persad v. Ramyad Singh* (1873), 12 B. L. R. 90, at p. 94; 20 W. R. C. R. 192, at p. 194.

the manager acting on behalf of the minor coparceners in case of necessity.¹

A manager can alienate or charge the family property with the express or implied consent of all the then existing adult coparceners, so as to bind them.² Alienation by manager.

Ratification is equivalent to consent.³

It is unsettled whether a manager can, even in the case of necessity,⁴ alienate the family estate, so far as adult coparceners are concerned, without their assent, either express or implied.

The decisions are in conflict.⁵ The texts of the Mitakshara⁶ upon which the law on the subject is based do not extend to such a case.

It is submitted that in case of necessity⁷ the consent may be presumed,⁸ but that where there is an express dissent, of which the purchaser had notice, or which he had means of knowing, there can be no valid sale or charge.

As to the powers of a father in a family governed by the Mitakshara law, to sell or charge the property to pay his debts, see *post*, pp. 294, 295.

Where the parties intend that all the coparceners should execute

Post, pp. 273 *et seq.*

Gharibullah.⁶ *Khalak Singh* (1903), 30 I. A. 165, at p. 169; 25 All. 407, at p. 415; 7 C. W. N. 681; at p. 687; 5 Bom. L. R. 478; *Miller v. Runga Nath Moulick* (1885), 12 Calc. 389; *Buraik Chuttur Singh v. Greedharee Singh* (1868), 9 W. R. C. R. 337; *Chhotiram v. Narayandas* (1887), 11 Bom. 605.

² *Gangabai v. Yamanaji A. Datar* (1864), 2 Bom. H. C. 301. Acquiescence shown by receiving the benefit of the purchase-money, with knowledge of the facts, amounts to a ratification, *Modhoo Dyal Singh v. Kolbur Singh* (1868), B. L. R. F. B. R. 1018, at p. 1020; 9 W. R. C. R. 511; *White v. Bisht Chunder Bose* (1863), 2 Hay, 567.

⁴ As to what amounts to necessity, see *post*, pp. 275-277.

⁵ In *Phul Chand v. Man Singh* (1882), 4 All. 309; *Bishambhur Naik v. Sudasheeb Mohapatter* (1864), 1 W. R. C. R. 96, and *Juggurnath Khootia v. Doobo Misser* (1870), 14 W. R. C. R. 80, the power was affirmed. See also *Ponnappa Pillai v. Pappuvayyengar* (1881), 4 Mad. 1,

at p. 18; *Sadabart Prasad Sahu v. Foolbush Koer* (1869), 3 B. L. R. F. B. R. 31, at p. 45; 12 W. R. F. B. R. 1, at p. 8; *Bunsee Lall v. Aoladh Ahsan (Shaikh)* (1874), 22 W. R. C. R. 552. See "Dayabliaga," chap. ii. para. 26; Strange's "Hindu Law," vol. ii. p. 348. It was held in *Deotaree Mahapattur v. Damoodhur Mahapattur*, Ben. S. D. A. 1859, p. 1643, that the principles of *Hunooman Persaud Panday's* case (*post*, p. 281) govern all cases of alienation by persons holding limited estates; *Contrà Muthoor Koonwaree v. Bootun Singh* (1870), 13 W. R. C. R. 30; *Miller v. Runga Nath Moulick* (1885), 12 Calc. 389, at p. 399. See *Upooroop Tewary v. Bandhjee Suhoy* (1881), 6 Calc. 749, at p. 753; 6 C. L. R. 192, at p. 196; Strange's "Hindu Law," vol. i. p. 20.

⁶ (chap. i. s. 1, paras. 28, 29.

⁷ *Post*, pp. 275-277.

⁸ See *Miller v. Runga Nath Moulick* (1885), 12 Calc. 389, at p. 399; *Chhotiram v. Narayandas* (1887), 11 Bom. 605; K. K. Bhattacharya's "Joint Hindu Family," pp. 487, 488.

the transfer, the document does not take effect by reason only that the managing member has signed it, and that there is a recital of necessity.¹

Where there is neither consent nor necessity, a manager other than the father, cannot alienate the family property by sale, mortgage, gift, permanent lease,² or otherwise.

Gift by father. Under the Mitakshara law, a father can make a gift of a small portion of the movable coparcenary property for pious purposes, or as a gift of affection, i.e. to a child or other near relative.³ He may devote a portion of the family property to a dowry for a daughter,⁴ and can also devote a small portion of the immovable property to pious purposes,⁵ but not for any other purpose.⁶ He cannot do so by will.⁷

Movables. There is some authority that, even under the Mitakshara law, a father has complete power of disposition over ancestral movables,⁸ but it is submitted that he has no greater power over movables than he has over immovable property,⁹ except so far as may be necessary from the nature of the property.

¹ *Sivasami Chetti v. Sevugan Chetti* (1901), 25 Mad. 389.

² *Ram Ratan v. Lachman Das* (1908), 30 All. 460; *Sheikh Chand v. Hiralal* (1907), 9 Bom. L. R. 114; *Narayan v. Political Agent Sawantwadi* (1905), 7 Bom. L. R. 172; *Satarum Pandit (Shri) v. Harihar Pandit (Shri)* (1910), 12 Bom. L. R. 910; *Brojomohun Ghose v. Luchmun Singh Thakoor*, W. R. 1864, C. R. 83; *Oahud Buksh (Cazee) v. Bindoo Bashinec Dossee* (1867), 7 W. R. C. R. 298.

³ *Bachoo Harkisondas v. Mankorebai* (1904), 29 Bom. 51; 6 Bom. L. R. 268, affirmed on appeal (1907), 34 I. A. 107; 31 Bom. 373; 11 C. W. N. 769; 9 Bom. L. R. 646; *Kamakshi Ammal v. Chakrapany Chettiar* (1907), 30 Mad. 452. See *Hanmantapa v. Jivubai* (1900), 24 Bom. 547; 2 Bom. L. R. 478.

⁴ *Kudutamma v. Narasimhacharyalu* (1907), 17 Mad. L. J. 528, referred to in *Churaman Sahu v. Gopi Sahu* (1909), 13 C. W. N. 994, at p. 999. See *Sivananjanja Perumal Sethurayar v. Muttu Ramalinga Sethurayar* (1866), 3 Mad. H. C. 75.

⁵ See *Raghunath Prasad v. Gobind*

Prasad (1885), 8 All. 76; *Gopal Chand Pande v. Kunwar Singh (Babu)* (1830), 5 Ben. Sel. R. 24 (new edition, 29). "Mitakshara," chap. i. s. 1, para. 28.

⁶ *Rayakkal v. Subbanna* (1892), 16 Mad. 84; *Baba v. Timma* (1883), 7 Mad. 357; *Gangu Bisheshar v. Pirthi Pal* (1880), 2 All. 635; *Rottala Runganatham Chetty v. Pulicat Ramasami Chetti* (1903), 27 Mad. 162; *Bala v. Balaji* (1897), 22 Bom. 825; *Pratabnarayan Das v. Court of Wards* (1869), 3 B. L. R. (A. J.) 21; 11 W. R. C. R. 343.

⁷ *Rathnam v. Sivasubramania* (1892), 16 Mad. 353.

⁸ See *Ponnappa Pillai v. Pappuvayyengar* (1881), 4 Mad. 1, at p. 47; *Nallatambi Chetti (Rayadur) v. Mukunda Chetti (Rayadur)* (1868), 3 Mad. H. C. 455, at p. 456; *Shib Dayee v. Doorga Pershad* (1872), 4 N. W. P. 63, at p. 70. "Mitakshara," chap. i. s. 1, paras. 21, 24.

⁹ See *Lakshman Dada Naik v. Ramchandra Dada Naik* (1880), 7 I. A. 181; 5 Bom. 48; 7 C. L. R. 320; S. C. in Court below (1876), 1 Bom. 561.

With these exceptions, and except so far as he has power ^{Powers of father.} to alienate the property for payment of his debts,¹ the powers of the father over coparcenary property are not in law greater than those of any other manager.²

The father cannot give family property to one son in preference to the others.³

Having regard to his position, greater deference will necessarily be paid to his wishes than in the case of any other manager.⁴

In case of necessity,⁵ the father or other manager⁶ can bind the interest of a minor coparcener by a sale or charge.⁷ Apparently he can in such case also bind the interest of an adult coparcener who does not dissent.⁸

This principle was laid down in the leading case of *Hunooman Persaud Panday v. Munraj Koonweree (Mussamut Babooee)*⁹ with regard to the manager for an infant heir. It has been applied to the managers of joint families acting on behalf of infant coparceners,¹⁰ to widows and daughters inheriting property from their husbands and fathers,¹¹ to women inheriting as widows of *gotraja sapindas*,¹² to the managers of religious endowments,¹³

¹ *Post*, pp. 294, 295.

² *Nuraj Buns Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88, at pp. 100, 101; 5 Calc. 148, at p. 165; 4 C. L. R. 226, at p. 233; *Chinnaya v. Perumal* (1889), 13 Mad. 51; *Pala-nivelappa Kaundan v. Mannaru Nairkan* (1865), 2 Mad. H. C. 416; *Shudanund Mohapattur v. Bonomalee Doss Mohapattur* (1866), 6 W. R. C. R. 256, at p. 261; *Ningareddi v. Laksh-mawa* (1901), 26 Bom. 163, at p. 166; 3 Bom. L. R. 647. An agreement amounting *pro tanto* to an alienation without consideration was set aside in *Bala v. Balaji* (1907), 22 Bom. 825.

³ *Nand Ram v. Mangal Sen* (1909), 31 All. 359.

⁴ See R. C. Mitra's "Law of Joint Property," pp. 81, 82.

⁵ *Post*, pp. 275-277.

⁶ The fact of his acting as manager is sufficient, although he may not be strictly entitled so to act. *Hunooman Persaud Panday v. Munraj Koonweree (Mussamut Babooee)* (1856), 6 M. I. A. 393, at p. 413; 18 W. R. C. R. note to p. 81. See also *Gunga Pershad v. Phool Singh* (1868), 10 W. R. C. R. 106; 10 B. L. R., note to p. 368; *Sheo Shankar Gir v. Ram Shewak Chowdhri* (1896), 24 Calc. 77. The act

of a person, who does not represent the minor, does not bind him, see *Balwant Singh (Raja) v. Clancy*, decided by P. C. 28th February, 1912.

⁷ No distinction can be drawn between the power to charge and the power to sell. The need which would justify the exercise of the one power would justify the exercise of the other. *Mohanund Mondul v. Nafur Mondul* (1899), 26 Calc. 820; 3 C. W. N. 770.

⁸ *Ante*, p. 223.

⁹ (1856), 6 M. I. A. 393; 18 W. R. C. R. note to p. 81.

¹⁰ *Soorendro Pershad Dobey v. Nundun Misser* (1874), 21 W. R. C. R. 196; *Tandavaraya Mudali v. Valli Ammal* (1863), 1 Mad. H. C. 398; *Deotaree Mahapattur v. Damoodhur Mahapattur*, Ben. S. D. A. 1859, p. 1643.

¹¹ *Kameswar Pershad (Baboo) v. Run Bahadoor Singh* (1880), 8 I. A. 8; 6 Calc. 843; 8 C. L. R. 361; *Amarnath Sah (Lala) v. Achan Kuar (Rani)* (1892), 19 I. A. 196; 14 All. 420; *Maheshwar Baksh Singh v. Ratan Singh* (1896), 23 I. A. 57; 23 Calc. 766.

¹² *Post*, p. 452.

¹³ *Sheo Shankar Gir v. Ram Shewak Chowdhri* (1896), 24 Calc. 77; *Door-ganath Roy (Koonwur) v. Ram Chunder*

to managers on behalf of lunatics,¹ and to the holders of impartible estates, which are inalienable by custom.²

Benefit
apart from
necessity.

In that case it was said that the power "can only be exercised rightly in a case of need or for the benefit of the estate." Of the large number of cases in which the principles contained in *Hunooman Persaud Panday's*³ case have been applied, there is not, so far as the writer is aware, any one in which a sale or charge has been justified by benefit apart from necessity, except the case of *Ratnam v. Govindarajulu*,⁴ where the money was originally raised for, amongst other purposes, enlarging the family dwelling-house, but in that case, as the debt in question was raised for the purpose of paying an antecedent debt, the question as to the original loan did not really arise (see *post*, p. 275). Apart from necessity, it is not easy to say what is for the benefit of the estate. It is clearly not intended that this power should authorize a sale or charge for the purpose only of increasing the immediate income of the estate.⁵

Manager
having powers
given by
Court.

When the manager of a joint family is acting under the authority of a Court, as when he has been appointed a guardian under Act VIII. of 1890,⁶ or is acting as administrator under the Probate and Administration Act,⁷ his powers are limited by the provisions of the Acts under the authority of which he has received an appointment; but as in the case of a family governed by the Mitakshara school of law a guardian cannot be appointed of the interest of a minor in coparcenary property,⁸ where such appointment has been made it will not interfere with his powers as manager under Hindu law.⁹

Sen (1876), 4 I. A. 52, at p. 63; 2 Calc. 341, at p. 351.

¹ *Goureenath v. Collector of Monghyr* (1867), 7 W. R. C. R. 5.

² *Gopal Prosad Bhakat v. Rag-hunath Deb* (1904), 32 Calc. 158; 9 C. W. N. 330. As to polygars, see *Kotta Ramasani Chetti v. Bangari Seshama Nayanivar* (1881), 3 Mad. 145. As to the powers of the karnavan of a tarwad, see *Kalliyani v. Narayana* (1885), 9 Mad. 266; *Kanna Pisharodi v. Kombi Achen* (1885), 8 Mad. 381; *Elayachundidathil Kombi Achen v. Kenatumkora Lakshmi Amma* (1882), 5 Mad. 201. As to the alienation of impartible estates which are not inalienable by custom, see *ante*, p. 254.

³ 6 M. I. A., at p. 423; 18 W. R. note to p. 81.

⁴ (1877), 2 Mad. 339.

⁵ See *Radha Pershud Singh v. Talook Raj Kooer (Mussumut)* (1873), 20 W. R. C. R. 38; *Kashur Singh v. Roop Singh* (1871), 3 N. W. P. H. C. 4.

⁶ See *Shurrut Chunder v. Rajkissen Mookerjee* (1875), 15 B. L. R. 350;

24 W. R. C. R. 46. In *Tejpal v. Janga* (1902), 25 All. 59, following *Girraj Baksh v. Hamid Ali (Kazi)* (1886), 9 All. 340 (a case under Act XL. of 1858), it was held that there being no sanction, the guardian was relegated to the powers he would have had, if he had not been appointed by the Court. The High Court of Bengal has taken a different view in *Bhupendro Narayan Dutt v. Nemye Chand Mondul* (1888), 15 Calc. 627, at p. 636, and *Shurrut Chunder v. Rajkissen Mookerjee* (1875), 15 B. L. R. 350; 24 W. R. C. R. 46; and it is submitted that the express terms of Act VIII. of 1890, s. 29, make this question clear. See *Sinaya Pillai v. Munisami* (1899), 22 Mad. 289; *Anpurnabai v. Durgapa Mahalapa Naik* (1894), 20 Bom. 150.

⁷ See *Ranjit Sing v. Amullya Prosad Ghose* (1905), 9 C. W. N. 923.

⁸ *Ante*, p. 259.

⁹ *Gharibullah v. Khalak Singh* (1903), 30 I. A. 165; 25 All. 407; 7 C. W. N. 681; 5 Bom. L. R. 478; *Ram Avtar Singh v. Nursing Narain Singh*, 3 C. L. J. 12.

"Where, in the particular instance, the charge is one that a prudent owner would make in order to benefit the estate, the *bond fide* lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it in the particular instance, is the thing to be regarded. But, of course, if that danger arises, or has arisen, from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong to support a charge in his own favour against the heir, grounded on a necessity which his wrong has helped to cause. Therefore, the lender . . . unless he is shown to have acted *malâ fide*, will not be affected, though it be shown that with better management the estate might have been kept free from debt."¹

Matters to be regarded.

All circumstances of pressure which render the raising of money necessary for the protection or preservation of the estate, or for the personal well-being of the coparceners, would support a sale or charge.

What amounts to necessity.

Baboo K. K. Bhattacharya, in his "Law of the Joint Hindu Family,"² says, "Legal necessity is of various forms. All the indispensable religious ceremonies, the sacraments, such as marriage and the investiture with the sacred thread, the obsequies, the cremation, the periodical oblations to the manes, the ceremonies customary in the family, the subsistence of the family, the education of the younger members, the payment of the ancestral debts, the giving of presents at particular seasons and on special occasions to the relatives, these and a thousand other causes of expenditure are constantly cropping up in a fairly prosperous Hindu joint family. All these are, in the strict sense of the word, lawful necessities."

The following are proper objects for the raising of money :—

(a) The payment of Government revenue or of other debts which are payable out of the estate.³

The debts of the father or other person through whom the property has been acquired by inheritance, will, or gift, must be paid, provided they are such as to bind the estate,⁴ and therefore the payment of them

¹ *Hunooman Persaud Panday v. Munraj Koonweree* (Mussamat Badooe) (1856), 6 M. 1. A. 393, at p. 423; 18 W. R. C. R., note to p. 81.

² Page 488.

³ Macnaghten's "Hindu Law," vol. ii. chap. xi. case 2, p. 293. *Gooroo-persaud Jena v. Muddunmohun Soor*, Ben. S. D. A. Rep., 1856, p. 980;

Bishambur Naik v. Sudasheeb Mohapatter (1864), 1 W. R. C. R. 96; *Srimohan Jha v. Brijbehary Misser* (1909), 38 Cal. 753. As to the debts of an ancestral business, see *Sakrabai Nathubai v. Maganlal Mulchand* (1901), 26 Bom. 206; 3 Bom. L. R. 738.

⁴ Debts barred by limitation do not justify an alienation by the

constitutes a sufficient necessity for sale or mortgage,¹ although no suit may have been instituted for the purpose of recovering them.² Where there is a decree the necessity is the more pressing.³

According to Hindu law, the payment of a father's debt, even in his lifetime, is a pious duty on the part of a son,⁴ provided that they have not been incurred for illegal or immoral purposes. In the case of a family governed by the Mitakshara school of Hindu law, the discharge of such debt is therefore such a necessary purpose as to give validity to a sale or mortgage of ancestral property by the father,⁵ or after his death,⁶ by the manager, whether the sons be minors or adults, provided that the debt has not been incurred for illegal or immoral purposes.

The satisfaction of a decree for preemption in a suit by the father has been held to justify a mortgage.⁷ The recovery of property which had been sold for arrears of road cess, has been held not to justify a mortgage.⁸

(b) The maintenance of the coparceners and of the persons whom they are legally or morally bound to maintain.⁹

(c) The reasonable marriage expenses¹⁰ of the members of the family.

As to the marriages of female members there can be no doubt.¹¹

The Madras High Court has differed on the question whether the marriage of male members of the family in Mitakshara cases justifies a sale or charge.¹² The Bombay High Court has held that it does justify

manager, *Melgirappa v. Shivappa* (1869), 6 Bom. H. C. 270; *Dinkar v. Appaji* (1894), 20 Bom. 155. See *Chinnaya Nayudu v. Gurunatham Chetti* (1882), 5 Mad. 169. As to the power of a widow to pay debts barred by limitation, see *post*, p. 465.

¹ See Macnaghten's "Hindu Law," vol. ii. chap. xi. case 6. Act VII. (Bo. C.) of 1866, s. 5. *Gunput Lall (Lalla) v. Toorun Koonwar (Mussamut)* (1871), 16 W. R. C. R. 52; *Soorjoo Pershad v. Krishan Pertab (Rajah)* (1869), 1 N. W. P. H. C. Rep. 46.

² *Kashur Singh v. Roop Singh* (1871), 3 N. W. P. 5.

³ See *Purmessur Ojha v. Goolbee (Mussamut)* (1869), 11 W. R. C. R. 446; *Sheoraj Kooer v. Nuckchedee Lall* (1870), 14 W. R. C. R. 72.

⁴ See *post*, p. 294.

⁵ See *post*, pp. 294, 295.

⁶ *Luchmun Dass v. Giridhur Chowdhry* (1880), 5 Calc. 855; 6 C. L. R. 473; *Gunga Prosud v. Ajudhia*

Pershad (1881), 8 Calc. 131; S. C. *Gunga Pershad v. Sheodyal Singh*, 9 C. L. R. 417.

⁷ *Nathu v. Kundan Lall* (1910), 33 All. 242.

⁸ *Srimohan Jha v. Brijbehary Misser* (1909), 36 Calc. 753.

⁹ *Makundi v. Sarabsukh* (1884), 6 All. 417, at p. 421; *Bishambur Naik v. Sudasheeb Mohapatra* (1864), 1 W. R. C. R. 96. As to the right to maintenance, see *ante*, pp. 227, 260.

¹⁰ This includes money paid for the bride in an *asura* marriage; *Bhagirathi v. Jokhu Ram Upadhia* (1910), 32 All. 575; see *ante*, pp. 47, 48.

¹¹ *Preaj Nurain v. Ajodhyapurshad* (1848), 7 Ben. Sel. Rep. 513, 2nd ed., 602; *Gunput Lall (Lalla) v. Toorun Koonwar (Mussamut)* (1871), 16 W. R. C. R. 52.

¹² *Kameswari Sastri v. Veeracharlu* (1910), 34 Mad. 422; *Govindarazulu Narasimham v. Devarabhotla Venkatanarasayya* (1903), 27 Mad. 206.

an alienation.¹ This view is, it is submitted, correct. The Allahabad High Court, while holding that a first marriage may be necessary, declines to extend the rule in every case to a second marriage.²

In a case governed by the Bengal law the sale of a share would, it is submitted, be justified. It is submitted that under both schools the sale of separate property would be justified.³

(d) The performance of an indispensable religious duty,⁴ such as the initiatory ceremony of a member of the family,⁵ the funeral ceremonies⁶ or *shradh* of a member of the family, or of the widow of a member,⁷ or a debt incurred on account of such expenditure.⁸

(e) Necessary legal expenses for the purpose of preserving or recovering or defending the estate,⁹ or of defending a member of the family.¹⁰

The instrument effecting a sale or creating a charge need not contain any recital of necessity,¹¹ but it is always better to insert such recital therein.

Recital of necessity.

In determining whether a sale or mortgage for a family necessity is justifiable, a reasonable latitude must be allowed for the exercise of the manager's judgment, especially in the case of a father or of a manager of a trading family, though this must not be extended so far as to free the persons dealing with him from the need of all precautions where a minor has an interest in the property.¹²

Discretion of manager.

¹ *Sundrabai v. Shivnarayana* (1907), 32 Bom. 81; 9 Bom. L. R. 1366.

² *Bhagirathi v. Jokhu Ram Upadhyia* (1910), 32 All. 575.

³ *Juggesur Sircar v. Nilambur Biswas* (1865), 3 W. R. C. R. 217. See *Makundi v. Sarabsukh* (1884), 6 All. 417, at p. 429; *Bhoorun Koer (Mussamut) v. Sahebzadee* (1866), 6 W. R. C. R. 149.

⁴ As to pilgrimages, see *Mutteeram Kowar v. Gopaul Sahoo* (1873), 11 B. L. R. 416.

⁵ Macnaghten's "Hindu Law," vol. ii. chap. xi. case 6, p. 296.

⁶ *Gunput Lall (Lalla) v. Toorun Koonwar (Mussamut)* (1871), 16 W. R. C. R. 52; *Nathuram v. Shoma Chhagan* (1890), 14 Bom. 562.

⁷ *Sukeenath Banoo v. Huro Churn Buruj* (1886), 6 W. R. C. R. 34; *Gunput Lall (Lalla) v. Toorun Koonwar (Mussamut)* (1871), 16 W. R. C. R. 52; *Srimohun Jha v.*

Brijbehary Misser (1909), 36 Calc. 753. See Macnaghten's "Hindu Law," vol. ii. chap. xi. case 6, p. 296 (1818); *Sadashiv Bhaskar Joshi v. Dhakubai* (1880), 5 Bom. 450.

⁸ *Gunput Lall (Lalla) v. Toorun Koonwar (Mussamut)* (1871), 16 W. R. C. R. 52.

⁹ *Gunga Pershad v. Phool Singh* (1868), 10 W. R. C. R. 106; 10 B. L. R., note to p. 368; see *Karimuddin (Munshi) v. Gobind Krishna Narain (Kunwar)* (1909), 36 I. A. 138; 31 All. 497; 13 C. W. N. 1117; 11 Bom. L. R. 911.

¹⁰ *Beni Ram v. Man Singh* (1911), 34 All. 4.

¹¹ *Woomesh Chunder Sircar v. Digumburee Dossee* (1865), 3 W. R. C. R. 154.

¹² *Babaji Mahadaji v. Krishnaji Deyji* (1878), 2 Bom. 666; *Ratnam v. Gorindarajulu* (1877), 2 Mad. 339, at p. 341.

Manager may
sell to repay
money
borrowed on
personal
credit.

The circumstance that to meet the necessities of his ward the manager has pledged his personal credit, does not disentitle him to charge or sell the property,¹ but he can only charge or sell it for the purpose of paying money which the minor was under an obligation to pay.²

Purchaser or
mortgagee
bound to
inquire as to
necessity.

A person lending money on the security of coparcenary property, or of the property of a minor, or buying that property, is bound to exercise due care and attention in seeing that there was a legal necessity for the loan,³ and must satisfy himself as well as he can,⁴ and as an honest man,⁵ with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate,⁶ and that circumstances of necessity had occurred which, under the Hindu law, would justify the sale of the property,⁷ or a charge upon it at the rate of interest arranged for in the particular instance.⁸

Current
account.

In the case of a long series of borrowings it is not always possible to prove exactly the purpose for which any particular item was borrowed. "It will . . . be sufficient for the creditor to show that the family was in chronic need of money for the current outgoings of the family life or its trade necessities, and that the moneys were advanced on the representation of the manager that they were needed for such objects."⁹

Judgment
debt.

Where the necessity arises from the pressure of a judgment debt, the person dealing with the manager is entitled to treat the judgment as *prima facie* proof of necessity.¹⁰

¹ *Succaram Morarji v. Kalidas Kallianji* (1894), 18 Bom. 631, at p. 635.

² *Ranmulsingji (Maharana Shri) v. Vadilal Vakhatchund* (1894), 20 Bom. 61.

³ *Gour Pershad Narain v. Sheo Pershad Ram* (1866), 5 W. R. C. R. 103; *Lootf Hossein (Syud) v. Dursun Lall Sahoo* (1875), 23 W. R. C. R. 424; *Gane Bhive Parab v. Kane Bhive* (1867), 4 Bom. H. C. A. C. 169.

⁴ *Muthoora Doss v. Kanoo Beharee Singh* (1874), 21 W. R. C. R. 287; *Dalibai v. Gopibai* (1902), 26 Bom. 433; 4 Bom. L. R. 105.

⁵ *Looloo Singh v. Rajendur Laha* (1867), 8 W. R. C. R. 364; *Runnoo Pandey v. Buksh Ali* (1871), 3 N. W. P. 2. See Act IV. of 1882, s. 38; *Jamsetji N. Tata v. Kashinath Jivan Manglia* (1901), 26 Bom. 326; 3 Bom. L. R. 898.

⁶ *Hunooman Persaud Panday v. Munraj Koonweree (Mussamut Babooee)* (1856), 6 M. I. A. 393; 18 W. R. C. R., note to p. 81; *Bunseedhur (Lalla) v. Bindeseree Dutt Singh (Koonwur)* (1866), 10 M. I. A. 454, at p. 471; 1 Ind. Jur. N. S. 165; *Trimbuck Anunt v. Gopallshet* (1863), 1 Bom. H. C. (2nd ed.) 27.

⁷ *Kasheerath Bose v. Chunder Mohun Nundee*, Ben. S. D. A. 1858, p. 1791; *Nouruttun Kooer (Mussamut) v. Gouree Dutt Singh (Baboo)* (1866), 6 W. R. C. R. 193.

⁸ See *Hurronath Roy Bahadoor (Rajah) v. Rundhir Singh* (1890), 18 I. A. 1; 18 Calc. 311.

⁹ *Krishna Ramaya Naik v. Vasudev Venkatesh Pai* (1896), 21 Bom. 808, at p. 815.

¹⁰ See *Muddun Thakoor v. Kantoo Lall* (1874), 1 I. A. 321, at p. 334; 14 B. L. R. 187, at p. 199; 22 W. R.

Where the manager is authorized by the Court to sell or pledge under secs. 28 or 29 of the Guardians and Wards Act,¹ or sec. 90 of the Probate and Administration Act,² or under the powers possessed by the High Courts, a *bond fide* purchaser or mortgagee need not investigate behind the order of authority.³

If the person dealing with the manager does make the above inquiries and acts honestly, the real existence of an alleged sufficient, and reasonably credited, necessity is not a condition precedent to the validity of his charge;⁴ and, under such circumstances, he is not bound to see to the application of the purchase-money.⁵

"It is obvious that money to be secured on any estate is likely to be obtained on easier terms than a loan which rests on mere personal security; and that, therefore, the mere creation of a charge securing a proper debt cannot be viewed as improvident management. The purposes for which a loan is wanted are often future as regards the actual application, and a lender can rarely have, unless he enters on the management, the means of controlling and rightly directing the actual application."⁶

This principle is to be found in sec. 38 of the Transfer of Property Act,⁷ which is as follows:—

"Where any person, authorized only under circumstances in their nature variable to dispose of immovable property, transfers such property for consideration, alleging the existence of such circumstances, they shall as between the transferee on the one part and the transferor and other

C. R. 56; *Bhotna (Mussamut) v. Roop Kishore* (1873), 5 N. W. P. H. C. Rep. 89; *Sheoraj Kooer v. Nuckchedee Lall* (1870), 14 W. R. C. R. 72. See, however, *Loolf Hossein (Syud) v. Dursun Lall Sahoo* (1874), 23 W. R. C. R. 424.

¹ VIII. of 1890.

² V. of 1881.

³ *Gungapershad Sahu v. Maharani Bibi* (1884), 12 I. A. 47, at p. 50; 11 Cal. 379; at pp. 383, 384. *Sikher Chund v. Dulputty Singh* (1879), 5 Cal. 363, at p. 381; S. C. *sub nomine Rajah Lall v. Delpetty Singh*, 5 C. L. R. 374, at p. 401.

⁴ *Hunooman Persaud Panday v. Munraj Koonveree (Mussamut Babooee)* (1856), 6 M. I. A. 293, at p. 424; 18 W. R. C. R., note to p. 81. See also *Tajooddeen Hossein (Sheikh) v. Bhugwanlal Sahoo*, Ben. S. D. A. 1860, p. 33; *Mahabeer Pershad Singh v. Dumreram Opadhya*, W. R. 1864,

C. R. 166; *Trimbuck Anunt v. Gopallshet* (1863), 1 Bom. H. C. A. C. (2nd ed.) 27.

⁵ *Radha Kishore Mookerjee v. Mirtoonjoy Gow* (1867), 7 W. R. C. R. 23; *Sukeenath Banoo v. Huro Churn Buruj* (1866), 6 W. R. C. R. 34; *Mahabeer Pershad Sing v. Dumreram Opadhya*, W. R. 1864, C. R. 166; *Gomaim Sircar v. Prannath Gopto* (1864), 1 W. R. C. R. 14; *Kandhia Lal v. Muna Bibi* (1897), 20 All. 135; *Gane Bhirc Parab v. Kane Bhirc* (1867), 4 Bom. H. C. A. C. 169; *Ghansham Singh v. Badiya Lal* (1902), 24 All. 547.

⁶ *Hunooman Persaud Panday v. Munraj Koonveree (Mussamut Babooee)* (1856), 6 M. I. A. 393, at p. 424; 18 W. R. C. R., note to p. 81.

⁷ Act IV. of 1882. See *Jamsetji N. Tata v. Kashinath Jivan Manglia* (1901), 26 Bom. 326, at p. 336; 3 Bom. L. R. 898.

Alienation
authorized by
Court.

Effect of
inquiry.

persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith."

Illustration.

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable inquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Nature of
inquiry.

The existence of a necessity and of sufficient pressure on the estate is all that the lender need inquire about.¹ He need not inquire into its causes,² or what is the exact amount required to be borrowed.³ Where the lender knows, or by ordinary diligence might have known, that there are funds available and sufficient for paying off the debt, the sale would be invalid.⁴ He must be entirely on his guard. He must see whether the family with which he is dealing be divided or undivided; and if the latter, at his peril he must see that the transaction be one by which the coparceners will be concluded.⁵

Consent of
adult copar-
ceners.

The fact that the adult members support the manager in the transaction may justify the person advancing the money in giving additional credit to the representations of the manager.⁶

¹ *Sheoraj Koor v. Nuckchedee Lall* (1870), 14 W. R. C. R. 72.

² *Mahabir Kower v. Jubha Singh* (1871), 8 B. L. R. 38; 16 W. R. C. R. 221; *Luchmeedhur Singh (Baboo) v. Ekbal Ali* (1867), 8 W. R. C. R. 75.

³ *Nuffer Chunder Banerjee v. Gudadadur Mundle* (1865), 3 W. R. C. R. 122; *Ghansham Singh v. Badiya Lal* (1902), 24 All. 547. "If a larger portion than is required is sold, it must be shown by the purchaser that the money required to pay off the claim could not be raised otherwise than by the course adopted." *Luchmeedhur Singh (Baboo) v. Ekbal Ali* (1867), 8 W. R. C. R. 75, at pp. 77, 78.

⁴ *Kaleenarain Roy Chowdhry v. Ram Coomar Chand*, W. R. 1864, C. R. 99. See *Gomain Sircar v. Prannath Gooplo* (1864), 1 W. R. C. R. 14; *Ravaneshwar Prasad Singh v. Chandi Prasad Singh* (1911), 38 Calc. 721. He need not inquire whether the debt could have been met from other sources. *Ajey Ram v. Girdharee* (1872), 4 N. W. P. 110. See *Damoodur Mohapattur v. Birjo Mohapattur*, Ben. S. D. A. 1858, p. 802.

⁵ Strange's "Hindu Law," vol. i. p. 200; *Dalpatsing v. Nanabhai* (1864), 2 Bom. H. C. (2nd ed.) 306.

⁶ *Balvant Santaram v. Babaji* (1884), 8 Bom. 602, at p. 609.

Where the transaction has been unimpeached for some years, a purchaser from the original vendee would not be expected to make minute inquiries.¹ Subsequent purchaser.

Where it is sought to enforce or support a sale or mortgage by a manager, the purchaser or mortgagee must prove that the transaction was entered into in good faith; ² that he advanced in consideration of the sale or mortgage a sum of money which was reasonable with reference to the value of the property; ³ that the money was raised or applied ⁴ for the relief of a recognized necessity, ⁵ or that proper inquiries were made by him with respect to the existence of a necessity justifying the sale, and that the result of such inquiries was such as to satisfy him as an honest man of the existence of such necessity.⁶ Burden of proof.

As to a suit for specific performance see *Gurusami Sastrial v. Ganapathia Pillai* (1882), 5 Mad. 337.

In *Hunooman Persaud Panday's case*⁷ their Lordships of the Privy Council said, "Next as to the consideration for the bond. The argument for the appellant in the reply, if correct, would indeed reduce the matter

¹ *Surub Narain Chowdhry v. Shree Gobind Pandey* (1873), 11 B. L. R. App. 29.

² *Roopnarain Sing v. Gugadhur Pershad Narain* (1868), 9 W. R. C. R. 297; *Tandavaraya Mudali v. Valli Ammal* (1863), 1 Mad. H. C. 398.

³ See *Saravana Tevan v. Muttayi Ammal* (1871), 6 Mad. H. C. Rep. 371.

⁴ *Muthoora Doss v. Kanoo Beharee Singh* (1874), 21 W. R. C. R. 287, and cases ante, p. 278, and post, p. 282.

⁵ *Debi Dayal Sahoo v. Bhan Pertap Singh* (1903), 31 Calc. 433, at p. 455; 8 C. W. N. 408, at p. 419; *Jamna v. Nain Sukh* (1887), 9 All. 493; *Vadali Rama Kristnama v. Manda Appaiya* (1865), 2 Mad. H. C. 407; *Amarnath Sah (Lala) v. Achan Kuar (Rani)* (1892), 19 I. A. 106; 14 All. 420; *Bunseeilhur (Lalla) v. Bindeseree Dutt Singh* (1866), 10 M. I. A. 454; 1 Ind. Jur. N. S. 165. The necessity cannot be inferred from the habits and general character of the vendor. *Mittrajit Sing v. Raghubansi Sing* (1871), 8 B. L. R. App. 5.

⁶ *Amarnath Sah (Lala) v. Achan Kuar (Rani)* (1892), 19 I. A. 106; 14 All. 420; *Kameswar Pershad (Baboo) v. Run Bahadoor Singh* (1880), 8 I. A. 8; 6 Calc. 843; 8 C. L. R. 361; *Poolunder Singh v. Ram Pershad* (1867), 2 Agra H. C. Reps. 147; *Kashecnath Bose v. Chunder Mohun Nundee*, Ben. S. D. A. 1858, p. 1791; *Bheknarain Singh v. Januk Singh* (1877), 2 Calc. 438; *Jamna v. Nain Sukh* (1887), 9 All. 493; *Kumola Pershad Narain Singh v. Nokh Lall Sahoo* (1866), 6 W. R. C. R. 30; *Sheo Pershad Ram v. Thukoor Pershad* (1866), 5 W. R. C. R. 103; *Trimbuck Anunt v. Gopallshet* (1863), 1 Bom. H. C., 2nd ed., 27; *Bhoorun Koer (Mussamut) v. Sahebzadee* (1866), 6 W. R. C. R. 149; *Soorendro Pershad Dobey v. Nundun Misser* (1874), 21 W. R. C. R. 196; *Lal Singh v. Deo Narain Singh* (1886), 8 All. 279.

⁷ *Hunooman Persaud Panday v. Munraj Koonweree (Mussamut) Babooee* (1856), 6 M. I. A. 393, at pp. 418, 419; 18 W. R. C. R. note to p. 81.

for consideration to a very short point; for, according to that argument, if the *factum* of a deed of charge by a manager for an infant be established, and the fact of the advance be proved, the presumption of law is *prima facie*, to support the charge and the onus of disproving it rests on the heir. For this position a decision, or rather a *dictum* of the Sudder Dewany Adawlut at Agra in the case of *Omed Rai v. Heeralall*,¹ was quoted and relied upon. But the *dictum* there, though general, must be read in connection with the facts of that case. It might be a correct course to adopt with reference to suits of that particular character, which was one where the sons of a living father were, with his suspected collusion, attempting, in a suit against a creditor, to get rid of the charge on an ancestral estate created by the father, on the ground of the alleged misconduct of the father in extravagant waste of the estate. Now, it is to be observed that a lender of money may reasonably be expected to prove the circumstances connected with his own particular loan, but cannot reasonably be expected to know, or to come prepared with proof, of the antecedent economy and good conduct of the owner of an ancestral estate; whilst the antecedents of their father's career would be more likely to be in the knowledge of the sons, members of the same family, than of a stranger; consequently, this *dictum* may perhaps be supported on the general principle that the allegation, and proof of facts, presumably in his better knowledge,² as well as on the obvious ground in such suits of the danger of collusion between father and sons in fraud of the creditor of the former. But this case is of a description wholly different, and the *dictum* does not profess to be a general one, nor is it so to be regarded. Their Lordships think that the question on whom does the *onus* of proof lie in such suits as the present is one not capable of a general and inflexible answer. The presumption proper to be made will vary with circumstances, and must be regulated by, and dependent on, them.³ Thus, where the mortgagee himself, with whom the transaction took place, is setting up a charge in his favour made by one, whose title to alienate he necessarily knew to be limited and qualified, he may be reasonably expected to allege and prove facts presumably better known to him than to the infant heir, namely those facts which embody the representations made to him of the alleged needs of the estate, and the motives influencing his immediate loan."

Where a length of time has elapsed since the transaction, the vendee or person claiming through him, cannot be expected to furnish the same amount of proof as in a recent transaction.⁴

The representations made by the manager at the time of the loan or alienation are evidence in favour of the person making the advance.

¹ 6 S. D. A. N. W. P. 618.

² See also the Indian Evidence Act I. of 1872, s. 106, which provides that "when any fact is specially within the knowledge of any person, the burden of proving that

fact is upon him."

³ See *Kaihur Singh v. Roop Singh* (1871), 3 N. W. P. H. C. 4.

⁴ See *Chowdhry Herasutollah v. Brojo Soondur Roy* (1872), 18 W. R. C. R. 77.

In *Hunooman Persaud Panday's case*¹ the following will be found: "It is to be observed that the representations by the manager accompanying the loan as part of the *res gestæ* and as the contemporaneous declarations of an agent, though not actually selected by the principal, have been held to be evidence against the heir; and as their Lordships are informed that such *prima facie* proof has been generally required in the Supreme Court of Calcutta between the lender and the heir; where the lender is enforcing his security against the heir, they think it reasonable and right that it should be required. A case in the time of Sir Edward Hyde East, reported in his decisions in the second volume of Morley's "Digest," seems to be the foundation of this practice (see also the case of *Brown v. Ram Kunaee Dutt*).² It is obvious, however, that it might be unreasonable to require such proof from one not an original party after a lapse of time and enjoyment, and apparent acquiescence; consequently, if, as is the case here as to part of the charge, it be created by substitution of a new security for an older one, when the consideration of the older one was an old precedent debt of an ancestor not previously questioned, a presumption of the kind contended for by the appellant would be reasonable."³

A recital of the necessity is by itself not sufficient evidence of necessity;⁴ but it may be some evidence of the representations made at the time.⁵

In determining the question of the validity of a sale, adequacy of price is often an important point to be considered,⁶ though inadequacy of price is not necessarily conclusive proof of *mala fides*.⁷ The mere fact that the manager or guardian might at the time of the sale have been able to make some more advantageous arrangement for the estate would not nullify a sale to a *bona fide* purchaser for value.⁸

Evidence of the *bona fides* of the transaction would of course be subject to be rebutted by evidence that the purchaser had

Recital of necessity.

Adequacy of price.

Fraud.

¹ *Hunooman Persaud Panday v. Munraj Koonweree (Mussamut) Babooee* (1856), 6 M. I. A. 393, at pp. 419, 420; 18 W. R. C. R. note to p. 81.

² Ben. S. D. A. 1853, p. 883.

³ See *Tasowwar Ali (Synd) v. Koonj Beharee Lal* (1869), 3 N. W. P. H. C. 8.

⁴ *Ajudhia v. Ram Sumer Misir* (1909), 31 All. 454; *Sunker Lall v. Juddoobuns Suhaye* (1868), 9 W. R. C. R. 285. See *Raj Lukhee Dabee v. Gokool Chunder Chowdhry* (1869), 13 M. I. A. 209; 3 B. L. R. P. C. 57; 12 W. R. P. C. 47; *Makundi v. Sarabsukh* (1884), 6 All. 417; *Gunga-*

gobind Bosc v. Dhunnee (Sreemutty) (1864), 1 W. R. C. R. 59.

⁵ See *Sikher Chund v. Dulputty Singh* (1879), 5 Calc. 363, at p. 375; 5 C. L. R. 374, at p. 387.

⁶ *Dagdu v. Kamble* (1864), 2 Bom. H. C. 343, at pp. 360, 361; *Khet-ermonnee Dassee v. Kishenmohun Mitter* (1863), Marsh. 313; 2 Hay, 196; *Kumola Pershad Narain Singh (Baboo) v. Nokh Lall Sahoo* (1866), 6 W. R. C. R. 30.

⁷ *Kumola Pershad Narain Singh (Baboo) v. Nokh Lall Sahoo* (1866), 6 W. R. C. R. 30, at p. 33.

⁸ *Kool Chunder Surmah v. Ramjoy Surmona* (1868), 10 W. R. C. R. 8.

acted *mala fide*, or in collusion with the manager to the injury of the family.¹ If there be any fraud in proceedings to enforce a charge, which was free from fraud, such proceedings may be set aside.²

Charge for a portion of advance.

When the purchaser or lender is unable to prove necessity for the raising of the whole of the money, or he is unable to prove that he was satisfied as to the necessity for the raising of the whole sum, he is entitled to a charge on the property for the amount which it was necessary to raise, or which after reasonable inquiries was shown to him to be necessary to raise.³ In any case he would be entitled to a charge for what is actually applied for the benefit of the family.⁴

Interest.

In the case of his obtaining such charge, a creditor, who has acted fairly, would ordinarily be entitled to interest at the contract rate.⁵

Where the interest is at a rate exceeding the rate at which the manager would have been able to borrow under the circumstances, the Court will reduce the interest to such lower rate, as the rate of interest is a question to which the lender ought to have applied his mind when inquiring as to the necessity.⁶

Burden of proof not altered by foreclosure proceedings or decree.

Foreclosure proceedings, or a purchase at a sale held under a decree in a suit on the mortgage, would not relieve a mortgagee from the burden of proving the *bona fides* of the transaction, or place him in any better position with regard to the family,⁷ although a *bona fide* purchaser without notice at a sale held in

¹ *Bunseedhur (Lalla) v. Bindesree Dutt Singh* (1866), 10 M. I. A. 454, at pp. 471, 472; 1 Ind. Jur. N. S. 165.

² As to the rights of a purchaser at an execution-sale without notice of the fraud, see *Kheternone Dossee v. Kishenmohun Mitter* (1863), Marsh. 313; 2 Hay, 196. The question whether the sale should be set aside must be determined by the Court in accordance with the principles of justice, equity, and good conscience: *Abdul Haye v. Nawab Raj* (1868), B. L. R., F. B. R. 911; 9 W. R. C. R. 196.

³ *Doorganath Roy (Konwar) v. Ramchunder Sen* (1875), 4 I. A. 52; 2 Calc. 311; *Deputy-Commissioner of Kheri v. Khanjan Singh* (1907), 34 I. A. 72; 29 All. 331; 11 C. W.

N. 474; 9 Bom. L. R. 591.

⁴ *Muthoora Doss v. Kanoo Beharee Singh* (1876), 21 W. R. C. R. 287. See *Hasmat Rai (Koer) v. Sunder Das* (1885), 11 Calc. 396; *Bunseedhur (Lalla) v. Bindesree Dutt Singh* (1866), 10 M. I. A. 454; 1 Ind. Jur. N. S. 165; *Paran Chandra Pal v. Karunamayi Dasi* (1871), 7 B. L. R. 90; 15 W. R. C. R. 268.

⁵ See *Bunseedhur (Lalla) v. Bindesree Dutt Singh* (1866), 10 M. I. A. 454; 1 Ind. Jur. N. S. 165.

⁶ See *Hurronath Roy Bahadoor (Rajah) v. Rundhir Singh* (1890), 18 I. A. 1; 18 Calc. 311.

⁷ *Purmanund v. Orumbah Koer (Musst.)*, W. R. 1864, C. R. 143; *Buzrung Sahoy Singh v. Mastora Chowdhraim (Mussamut)* (1874), 22 W. R. C. R. 119.

execution of a decree in a suit which was properly constituted might not be bound to inquire into the propriety of the loan which formed the basis of the decree.¹

Except where, under the Mitakshara law, the father can alienate or charge the coparcenary property,² no individual coparcener, other than the manager, is entitled, without the consent of all the members, to deal with the joint family property.³

Acts of co-
parcener not
manager.

There may be circumstances where the acts of a member of the family, who is not the manager, can be treated as binding the family, on the ground that there was an express or implied agency,⁴ as where money is borrowed for family purposes.⁵

As to who may contest an alienation, see *ante*, p. 228, and *post*, pp. 290, 291.

It has been held that where a coparcener represented to the mortgagee that he had power to charge the property, he was bound to make good his representation by suing for partition.⁶ On such partition the mortgage would attach to the share allotted to the mortgagor.⁷

When there are no existing coparceners, the surviving coparcener is, under the Mitakshara law, entitled to dispose of ancestral property as if it were his separate acquisition;⁸ but a gift by will will take no effect against a son who was in his mother's womb at the time of the death of his father.⁹

Power of
surviving
coparcener.

¹ See *ante*, p. 278.

² *Post*, pp. 294, 295.

³ *Guruvappa v. Thimma* (1887), 10 Mad. 316; *Rajbulubh Bhooyar v. Buneta De (Mussumaut)* (1801), 1 Ben. Sel. R. 44 (2nd ed. 59); *Prannath Das v. Calishunkar Ghosal* (1801), 1 Ben. Sel. R. 45 (2nd ed. 60). As to the duty of the purchaser, see *Shibosoondery Dossee v. Rakhall Doss Sirkar* (1864), 1 W. R. C. R. 38.

⁴ See *Krishna Ayyar v. Krishna-sami Ayyar* (1900), 23 Mad. 597; *Vithu Dhondi v. Babaji* (1908), 32 Bom. 375.

⁵ *Buldeo Ram Tewaree v. Somessur Panray* (1867), 7 W. R. C. R. 490.

⁶ *Ram Sunder Das (Mahanth) v. Barhamdeo Narayan Thakur* (1909), 14 C. W. N. 552; *Mahabeer Persad v. Remyad Singh* (1873), 12 B. L. R.

90; 20 W. R. C. R. 192.

⁷ *Ibid.*

⁸ *Nagalutchmee Unmal v. Gopoo Nadaraja Chetty* (1856), 6 M. I. A. 309; *Vallinayagam Pillai v. Pachche* (1863), 1 Mad. H. C. 326; *Narottam Jagjivan v. Narsandas Harikisandas* (1866), 3 Bom. H. C. A. C. 6; *Adjoodhia Gir v. Kashee Gir* (1872), 4 N. W. P. 31. See *ante*, pp. 213, 214. As to the power to deal with separate acquisitions, see *ante*, p. 238. The last surviving member of a Madras *tarwad* can dispose of the *tarwad* property by will, *Alami v. Komu* (1888), 12 Mad. 126.

⁹ *Minakshi v. Virappa* (1884), 8 Mad. 89; *Hanmant Ramchandra v. Bhimacharya* (1887), 12 Bom. 105; *Vrandavandas Ramdas v. Yamunabhai* (1875), 12 Bom. H. C. 229.

ALIENATION OF AN UNDIVIDED SHARE.

Alienation of
undivided
share. Bengal
school.

A Hindu governed by the Bengal school of Hindu law can deal with his undivided share of joint family property either by act *inter vivos* or by will, in the same way as he can deal with his separate property.¹ On his death intestate his undivided share passes to his heir.

His share may be sold in execution of a decree.

The purchaser has been held entitled to be put into possession of the share bought by him,² but not in such a way as to interfere with the family.

In one case³ when he applied for possession, a share was allotted to him in severalty. This had the same effect as if he had brought a partition suit.

According to the Mitakshara law, except where the debtor is the father, or paternal grandfather of a coparcener, whose rights are enlarged by his death, a creditor of a coparcener, who has not obtained a judgment and has not attached the debtor's interest⁴ before the death of his debtor,⁵ has no right to recover his debt from the coparcenary property.⁶

If it were otherwise the right of survivorship⁷ would be ineffectual.

Sale in
execution.

He can obtain a sale of the undivided interest of his debtor in the property of the coparcenary in execution of a decree,⁸ if

¹ *Ram Debul Lall v. Mitterjeet Singh* (1872), 17 W. R. C. R. 420; *Anund Chund Rai v. Kishen Mohun Bunoja* (1905), 1 Ben. Sel. R. 115 (new edition, 152); *Ramkunhaec Rai v. Bung Chund Bunhoojee* (1820), 3 Ben. Sel. R. 17 (new edition, 22); *Kounla Kant Ghosal v. Ram Huree Nund Gramee* (1827), 4 Ben. Sel. R. 196 (new edition, 247).

² *Rajamikanth Biswas v. Ram Nath Neogy* (1883), 10 Calc. 244.

³ *Bijoy Keshub Roy Bahadoor (Koonwar) v. Shama Soonduree Dossee* (1865), 2 W. R. M. A. 30. See *Kesubnath Ghose v. Hurgovind Bose*, Ben. S. D. A., 1853, p. 768; *Ramtonoo Chatterjee v. Ishurchunder Neogee* Ben. S. D. A., 1857, p. 1585.

⁴ This does not include an attachment before judgment: *Ramunayya v. Rangappayya* (1893), 17 Mad. 144.

⁵ *Bithal Das v. Nand Kishore* (1900), 23 All. 106; *Suraj Bansi Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88, at pp. 108, 109; 5 Calc. 148, at pp. 173, 174; 4 C. L. R. 226, at p. 241; *Bailur Krishna Rau v. Lakshmana Shanbhogue* (1881), 4 Mad. 302; *Balkishen (Rai) v. Sitaram (Rai)* (1885), 7 All. 731.

⁶ *Bithal Das v. Nand Kishore* (1900), 23 All. 106; *Udaram Sitaram v. Ranu Panduji* (1875), 11 Bom. H. C. 76; *Narsinbhat v. Chenapa* (1877), 2 Bom. 479; *Balbhaddhar v. Bishehar* (1886), 8 All. 495; *Jagannath Prasad v. Sitaram* (1888), 11 All. 302; *Sadabart Prasad Sahu v. Foolbush Koer* (1869), 3 B. L. R. F. B. 31, at p. 35; 12 W. R. F. B. 1, at p. 3.

⁷ *Ante*, pp. 228, 229.

⁸ *Deendyal Lal v. Jugdeep Narain Singh* (1877), 4 I. A. 247; 3 Calc.

during the lifetime of the debtor there has been an attachment and order for sale.¹

A provisional release from attachment does not affect his right.²

The purchaser at such sale is not entitled to sue for possession,³ but is entitled to ascertain his share by such partition as the judgment debtor might have compelled before the alienation of his share took place.⁴

If he has obtained possession he is not liable to be turned out, but the coparceners are entitled to joint possession with him.⁵

The question whether a member of a joint family governed by the Mitakshara school of law can alienate or charge his interest in the coparcenary property, must be determined according to the Province in which the case arises.

It is settled law in Madras⁶ and Bombay⁷ that a purchaser

198; *Suraj Bunsî Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88; 5 Calc. 148; 4 C. L. R. 226; *Hurdey Narain Sahu (Baboo) v. Rooder Perkash Misser (Pundit Baboo)* (1883), 11 I. A. 26; 10 Calc. 626; *Tuffuzzool Hossein Khan (Syud) v. Rughoonath Pershad* (1874), 14 M. I. A. 40, at p. 50; *Jumoon Persad Singh v. Dignarain Singh* (1883), 10 Calc. 1; 13 C. L. R. 74; *Jallidar Singh v. Ram Lal* (1878), 4 Calc. 723; *Narain Dass (Rai) v. Nounil Lal* (1879), 4 Calc. 809; 4 C. L. R. 67; *Collector of Monghyr v. Hurdas Narain Shahai* (1879), 5 Calc. 425; 5 C. L. R. 112; *Vasudev Bhat v. Venkatesh Sambhav* (1873), 10 Bom. H. C. 139; *Udaram Sitaram v. Ranu Panduji* (1875), 11 Bom. H. C. 76; *Virasvami Gramini v. Ayyasami Gramini* (1863), 1 Mad. H. C. 471; *Goor Surun Dass v. Ram Surun Bhukut* (1866), 5 W. R. C. R. 54.

¹ *Suraj Bunsî Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88, at p. 109; 5 Calc. 148, at p. 174; 4 C. L. R. 226, at p. 241; *Balkishen (Rai) v. Sita Ram (Rai)* (1885), 7 All. 731; *Parikh Girdarlal v. Thakor Fatehsing* (1899), 2 Bom. L. R. 32. In *Bithal Das v. Nand Kishore* (1900), 23 All. 106, the mere attachment seems to have been held sufficient to create a charge, but it is doubtful whether it has such effect, see *Soobhul Chunder Paul v. Nitye Churn Bysack* (1880), 6 Cal. 663.

² *Ram Chandra Marwari v. Mude-shwar Singh* (1906), 33 Calc. 1158; 10 C. W. N. 979.

³ *Kallapa v. Venkatesh Vinayak* (1878), 2 Bom. 676; *Palani Konan v. Masa Konan* (1896), 20 Mad. 243.

⁴ *Deendyal Lal v. Jugdeep Narain Singh* (1877), 4 I. A. 247; 3 Calc. 198; *Hurdey Narain Sahu (Baboo) v. Rooder Perkash Misser* (1883), 11 I. A. 26; 10 Calc. 626; *Jallidar Singh v. Ram Lal* (1878), 4 Calc. 723; *Sumrun Thakur v. Chundermun Misser* (1879), 5 C. L. R. 26; 3 C. L. R. 282; *Pandurang Anandray v. Bhaskar Shadashiv* (1874), 11 Bom. H. C. 72; *Lall Jha (Baboo) v. Juma Buksh (Sheikh)* (1874), 22 W. R. C. R. 116; *Maruti Narayan v. Lila Chand* (1882), 6 Bom. 564; *post*, p. 316.

⁵ *Mahabalaya v. Timaya* (1875), 12 Bom. H. C. 138; *Babaji Lakshman v. Vasudev Vinayak* (1876), 1 Bom. 95; *Kallapa v. Venkatesh Vinayak* (1878), 2 Bom. 676; *Hari Premji (Patil) v. Hakamchand* (1884), 10 Bom. 363.

⁶ *Virasvami Gramini v. Ayyasvami Gramini* (1863), 1 Mad. H. C. 471; *Peddammuthulaty v. N. Timma Reddy* (1864), 2 Mad. H. C. 270; *Palanivelappu Kaundun v. Mannaru Naikan* (1865), 2 Mad. H. C. 416; *Kotta Ramasami Chetti v. Bangari Seshama Nayanivaru* (1881), 3 Mad. 145, at p. 167; *Aiyyagari Venkataramayya v. Aiyyagari Ramayya* (1902), 25 Mad. 690.

⁷ *Tukaram Ambaidas v. Ramchandra*

for value ¹ acquires the interest of his vendor, that is a right to partition, and a right on partition to the share to which his vendor would have been entitled,² but without partition he cannot acquire a right to any specific property ³ or to a specific share. He is not entitled to possession,⁴ his right in that respect being the same as the right of a purchaser at a sale in execution of a decree.⁵

The Judicial Committee has recognized this to be the law applicable in Madras and Bombay.⁶

Position of
purchaser.

The purchaser becomes "a sort of tenant in common with the coparceners, admissible as such to his distributive share upon a partition taking place."⁷

As to his right to partition, see *post*, p. 316.

It has been held in Bombay that the position of the purchaser is not improved by the death of other coparceners before partition. He stands in no better position than his alienor, and, consequently, like the latter, is liable to have his share diminished before partition by the birth of other coparceners if he stands by and does not insist upon an immediate partition.⁸ It has been held in Madras that he takes on partition such share as the alienor had at the time of the alienation.⁹

Agreement
not to sell.

An agreement in restraint of the alienation of an undivided share is valid,¹⁰ but it will not, it is submitted, bind a purchaser, at any rate where he has received no notice of the agreement.¹¹ It does not affect a purchaser at a sale in execution of a decree.¹²

(1869), 6 Bom. H. C. A. C. J. 247; *Vasudev Bhat v. Venkatesh Sanbhar* (1873), 10 Bom. H. C. 139; *Fakirapa v. Chanapa* (1873), 10 Bom. H. C. 162. For a case of an assignment to a coparcener, see *Shivajirao v. Vasantrao* (1908), 33 Bom. 267; 10 Bom. L. R. 778.

¹ In the case of a sale for inadequate consideration, the purchaser is entitled to a charge for the amount paid. *Rottalu Ranganathan Chetty v. Pulicat Ramasami Chetti* (1903), 27 Mad. 162.

² *Ante*, p. 286. He cannot alienate a share in impartible property; see *Byari v. Puttanna* (1890), 14 Mad. 38. As to a right of worship, see *post*, pp. 241, 242.

³ *Venkatachella Pillay v. Chinnaiya Mudaliar* (1870), 5 Mad. H. C. 166; *Villa Bulten v. Yamenamma* (1874), 8 Mad. H. C. 6.

⁴ Act IV. of 1882, s. 44. See *Bhiku v. Puttu* (1906), 8 Bom. L. R. 99.

⁵ *Ante*, p. 287.

⁶ *Lakshman Dada Naik v. Ramchan-*

dra Dada Naik (1880), 7 I. A. 181, at p. 195; 5 Bom. 48, at p. 62; *Balgobind Das v. Narain Lal* (1893), 20 I. A. 116, at p. 125; 15 All. 339, at p. 351; *Suraj Bunsu Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88, at pp. 101, 102; 5 Calc. 148, at p. 166; 4 C. L. R. 226, at p. 234.

⁷ *Vasudev Bhat v. Venkatesh* (1873), 10 Bom. H. C. 139, at p. 147. As to a partition at the instance of the purchaser, see *post*, p. 316.

⁸ *Gurlingapa v. Nandapa* (1896), 21 Bom. 797.

⁹ *Chinnu Pillai v. Kalimuthu Chetti* (1911), 35 Mad. 47, differing from *Rangasami v. Krishnayyan* (1891), 14 Mad. 408.

¹⁰ *Lachmi Chand v. Tori Lal* (1878), 1 All. 618.

¹¹ Cf. *Kanna Pisharodi v. Kombi Achen* (1885), 8 Mad. 381.

¹² Cf. *Golak Nath Roy Chowdhry v. Mathura Nath Roy Chowdhry* (1891), 20 Calc. 273.

In Bengal ¹ and in the United Provinces ² a coparcener has no power to alienate by sale or mortgage his undivided share ³ to a stranger or to a coparcener for his own benefit ⁴ without the consent of his coparceners. This view has been accepted by the Judicial Committee.⁵

The alienation of his share by one member, would imply his consent to the alienation of their shares by the other members.⁶ Equity on setting aside alienation.

The alienation will not be set aside at the instance of the alienor or persons claiming through him except upon the terms of refunding the amount paid with interest.⁷

Where a coparcener has mortgaged or sold his undivided share of specified coparcenary property (where such mortgage or sale is permissible), and the property has on partition been allotted to another member, the mortgagee or purchaser is entitled to a charge upon other property allotted on the partition to the person dealing with him.⁸ Mortgage of undivided share.

Before partition, he is entitled to a declaration that he has a charge on the interest of the mortgagors.⁹

It has been held in Bengal that, while declaring the mortgage of an undivided share to be void, the Court may direct that the joint property be held in specified shares, and may attach the lien of the mortgage to the

¹ *Sadabart Prasad Sahu v. Foolbash Koer* (1869), 3 B. L. R. F. B. R. 31; 12 W. R. F. B. 1; and cases there cited: *Nathu Lal Chowdhry v. Chadi Sahi* (1869), 4 B. L. R. A. C. 15; 12 W. R. C. R. 447; *Mahabeer Persad v. Ramyad Sing* (1873), 12 B. L. R. 90; 20 W. R. C. R. 192; *Bunsee Lall v. Aoladh Ahsan (Shaikh)* (1874), 22 W. R. C. R. 552; *Chunder Coomar v. Hurbuns Sahai* (1886), 16 Calc. 137. As to a lease, see *Ram Debul Lall v. Mitterjeet Singh* (1872), 17 W. R. C. R. 420.

² *Kali Shankar v. Nawab Singh* (1909), 31 All. 507; *Joynarain Sing v. Roshun Sing*, 2 S. D. A. N. W. P. (1860), 162; *Goor Pershad v. Sheodeen* (1872), 4 N. W. P. 137; *Chamaili Kuar v. Ram Prasad* (1879), 2 All. 267; *Rama Nand Singh v. Gobind Singh* (1883), 5 All. 384; *Chandar Kishore v. Dampat Kishore* (1894), 16 All. 369; *Bhagirathi Mier v. Sheobhik* (1898), 20 All. 325. See *Amolak Ram v. Chandan Singh* (1902), 24 All. 483.

³ He can do so when they are so far separate, that each collects his quota of rent separately, *Kalika Sahoy v. Gourree Sunkur* (1869), 12 W. R. C. R. 287.

⁴ It has been held that he can alienate it for the benefit of the family, *Juggurnuth Khootia v. Doobo Misser* (1870), 14 W. R. C. R. 80.

⁵ *Balgobind Das v. Narain Lal* (1893), 20 I. A. 116, at p. 125; 15 All. 339, at p. 351; *Madho Parshad v. Mehrban Singh* (1890), 17 I. A. 194; 18 Calc. 157.

⁶ *Ganraj Dubey v. Sheozore Singh* (1880), 2 All. 898.

⁷ *Jamuna Parshud v. Gangu Pershad Singh* (1892), 19 Calc. 401.

⁸ See *Byjnath Lall v. Ramooddeen Chowdhry* (1873), 1 I. A. 106; 21 W. R. C. R. 233; *Hemchunder Ghose v. Thakomoni Debi* (1893), 20 Calc. 533; *Amolak Ram v. Chandan Singh* (1902), 24 All. 483.

⁹ *Doddappa v. Somappa* (1906), 8 Bom. L. R. 550.

share allotted to the mortgagor.¹ A similar order was made in the case of a sale.² These decisions, it is submitted, practically have the effect of validating a mortgage or sale of a share.³

Gift or devise. The power to dispose by gift or devise of his interest in coparcenary property in a case subject to the Mitakshara law is disallowed by all the High Courts.⁴

As a right of survivorship accrues to the other coparceners on the death of a coparcener,⁵ it follows that there can be no right to dispose of any interest in the coparcenary property by will.⁶

A distinction has been made between a gift to a stranger and a gift to a coparcener,⁷ but it is submitted that no such distinction is admissible.

As to the power of the last surviving coparcener, see *ante*, p. 285.

A local custom, whereby a coparcener or his wife could in the absence of male issue give his share to his daughter or daughter's son has been recognized.⁸

SETTING ASIDE ALIENATION.

Who may
contest
alienation.

An alienation of coparcenary property, or of any interest therein, by a father or other manager, or by a coparcener or stranger, may be contested by the son or any coparcener who

¹ *Ram Soonder Das (Mohanth) v. Nathuni Singh* (1911), 15 C. W. N. 748; *Ram Sunder Das (Mahanth) v. Barhamdeo Narayan Thakur* (1909), 14 C. W. N. 552; *Muhabeer Persad v. Ramyad Singh* (1873), 12 B. L. R. 90; 20 W. R. C. R. 192.

² *Bunwari Lal v. Daya Sunker Misser* (1909), 13 C. W. N. 815.

³ See *ante*, p. 289. Cf. *Kali Shankar v. Nawab Singh* (1909), 31 All. 507.

⁴ *Baba v. Timma* (1883), 7 Mad. 357; *Ponnusami v. Thatha* (1886), 9 Mad. 273; *Ramanna v. Venkata* (1888), 11 Mad. 246; *Rottala Rungnanatham Chetty v. Pulicat Ramasami Chetti* (1903), 27 Mad. 162; *Gopal Lal v. Mahadeo Prasad* (1901), 6 C. W. N. 651; *Sitaram Pandit (Shri) v. Harihar Pandit (Shri)* (1910), 35 Bom. 109; *Gangubai v. Ramanna* (1866), 3 Bom. H. C. (A. C. J.) 66; *Udaram Sitaram v. Ramu Panduji* (1875), 11 Bom. H. C. 76; *Vrandavandas Ramdas v. Yamunabai* (1875), 12 Bom. H. C. 229; *Kalu v. Barsu* (1894), 19 Bom. 803. See *Lakshman Dada Naik v. Ramchandra Dada Naik* (1880), 7 I. A. 181, at p. 195;

5 Bom. 48, at p. 62; 7 C. L. R. 320, at p. 329. As to the power of a father to make a gift of coparcenary property, see *ante*, p. 272.

⁵ *Ante*, pp. 228, 229.

⁶ *Tottempudi Venkataratnam v. Tottempudi Seshamma* (1903), 27 Mad. 228; *Rathnam v. Sivasubramania* (1892), 16 Mad. 353; *Villa Butten v. Yamenamma* (1874), 8 Mad. H. C. 6; *Lakshman Dada Naik v. Ramchandra Dada Naik* (1880), 7 I. A. 181; 5 Bom. 48; 7 C. L. R. 320; *Harilal Bapuji v. Mani (Bai)* (1905), 29 Bom. 351; 7 Bom. L. R. 255; *Chatturbhoj Meghji v. Dharamsi Naranji* (1884), 9 Bom. 438; *Lakshmi Shankar v. Vajjnath* (1881), 6 Bom. 24; *Adgoodhia Gir v. Kashee Gir* (1873), 4 N. W. P. 31; *Buldeo Singh (Rajah) v. Mahabeer Singh* (1866), 1 Agra H. C. 155; *Minakshi v. Virappa* (1884), 8 Mad. 89; Hindu Wills Act (XXI. of 1870), s. 3.

⁷ *Joitaram v. Ramkrishna* (1902), 27 Bom. 31, at pp. 40, 41; 4 Bom. L. R. 754.

⁸ *Nandi Singh v. Sita Ram* (1888), 16 I. A. 44; 16 Calc. 677.

was born,¹ conceived,² or adopted³ at the time of the completion of the alienation,⁴ and is entitled to a share on partition.

A coparcener who was born after an invalid alienation is also entitled to have it set aside.⁵

A person disqualified from inheritance could not sue, although he might have a right of maintenance.⁶

It has been held that an invalid alienation made without the consent of existing sons can be set aside at the instance of a son who was not born at the time of the alienation,⁶ but it is clear that an alienation which by consent or otherwise is binding upon all the coparceners in existence at the time cannot be contested by a person who is born subsequently.⁷

In a family governed by the Mitakshara law a suit to set aside an alienation cannot on the death of the plaintiff be continued by his heir, as his right lapses.⁸ Under the Bengal school the right would pass to the heir.

Death of person entitled to contest alienation.

The person entitled to contest an alienation may sue to set aside the alienation, or if it has not taken place may sue for an injunction.⁹ Where he cannot obtain substantive relief he can sue for a declaratory decree.¹⁰

In a case governed by the Bengal school of law a coparcener can sue to set aside an alienation, so far only as it affects his share of the coparcenary property.

How alienation is to be set aside.

¹ *Girdharee Lall v. Kantoo Lall* (1874), 1 I. A. 321; 14 B. L. R. 187; 22 W. R. C. R. 56; *Bholanath Khetry v. Kartick Kissen Das Khetry* (1907), 34 Calc. 372; 11 C. W. N. 462; *Chuttan Lal v. Kallu* (1910), 33 All. 283; *Raja Ram Tewary v. Luchmun Persad* (1867), B. L. R. Sup. Vol. 731, at p. 741; 8 W. R. C. R. 15, at p. 21; *Aghori Ramasarg Sing v. O'chane* (1870), 5 B. L. R. App. 14.

² *Madho Singh v. Hurmut Ally* (1868), 3 Agra, 432; *Jado, Singh v. Ranee (Mussumat)* (1873), 5 N. W. P. 113. See, however, *Goura Chowdhrair (Mussumat) v. Chummun Chowdhry*, W. R. (1864), C. R. 340. Cf. *Yekeyamain v. Agniavarian* (1869), 4 Mad. H. C. 307.

³ See *Sudanund Mohapattur v. Soorjo Monee Dayce* (1869), 11 W. R. C. R. 436; *Rambhat v. Lakshman Chintaman Maynlay* (1881), 5 Bom. 630; as to an adopted son setting aside an alienation by the widow adopting him, see *ante*, pp. 192, 193.

⁴ See *Ponnambula Pillai v. Sunda-*

rupanyar (1897), 20 Mad. 354.

⁵ *Hurodoot Narain Singh v. Beer Narain Singh* (1869), 11 W. R. C. R. 480; *Tulshi Ram v. Babu* (1911), 33 All. 654.

⁶ *Ram Soonder Roy v. Ram Sahye Bhugut* (1882), 8 Calc. 919; *Ram Sahye Bhukut v. Laljee Sahye (Lalla)*, 8 Calc. 149; 9 C. L. R. 487.

⁷ See *Bholanath Khetry v. Kartick Kissen Das Khetry* (1907), 34 Calc. 372; 11 C. W. N. 462; *Mukuraman Chetti v. Ettapasami* (1899), 22 Mad. 372, at p. 375; *Ramasamayyan v. Virasami Ayyan* (1898), 21 Mad. 222.

⁸ *Padarath Singh v. Raja Ram* (1882), 4 All. 235.

⁹ *Knath Narain Singh v. Prem Lal Paurey* (1865), 3 W. R. C. R. 102; *Raja Ram Tewary v. Luchmun Persad* (1867), B. L. R. Sup. Vol. 731; 8 W. R. C. R. 15; *Retoo Raj Pandey v. Laljee Pandey* (1875), 24 W. R. C. R. 399.

¹⁰ As to declaratory decrees, see Act I. of 1877, s. 42; *Kathama Natchiar v. Dorasinga Tever* (1875), 2 I. A. 169; 15 B. L. R. 83; 23 W. R. C. R. 314.

Under the Mitakshara school, in the case of an invalid alienation in the Bombay or Madras Presidencies by a coparcener, the coparcener aggrieved may be entitled to have it set aside except so far as the share of the alienor is concerned,¹ whereas in Bengal or the United Provinces he is entitled to have the whole alienation set aside, subject to such equities as may be applicable.²

This distinction arises because a sale of an undivided interest is permissible in the two former Presidencies.³

A son is not entitled, during the father's lifetime, to eject the purchaser because the father sells without authority.⁴ He may bring a suit for partition, or may possibly, if he sues on behalf of the family, be entitled to a decree for possession⁵ on such terms as may be equitable, as, for instance, that the purchaser be entitled to a charge for the money paid by him,⁶ or be entitled to sue for partition.⁷

The consent of an adult coparcener or his acquiescence, at any rate where it amounts to an estoppel, prevents him from disputing an alienation made by a father or other manager.⁸ The ratification of the alienation by him will also have the same effect.⁹

A suit brought by a Hindu governed by the law of the Mitakshara

Consent of
coparcener.

Limitation
of suit.

¹ See *Marappa Gaundan v. Rangasami Gaundan* (1899), 23 Mad. 89.

² *Hanuman Dutt Roy v. Kishen Kishor Narayan Sing (Baboo)*, 8 B. L. R. 358; 15 W. R. F. B. 6. See *post*, p. 293.

³ *Ante*, pp. 287, 288.

⁴ *Baboo Ram v. Gajadhur Singh* (1867), Agra H. C. F. B. R. 86; *Pursun Sahoo v. Ramdeen Lall*, S. D. A. R. N. W. P., 1852, p. 365; *Chutter Dharee Lal v. Bikaoo Lal*, Ben. S. D. A., 1850, p. 282.

⁵ *Hanuman Dutt Roy v. Kishen Kishor Narayan Sing (Baboo)* (1879), 8 B. L. R. 358; 15 W. R. F. B. 6.

⁶ *Post*, p. 293.

⁷ *Deendyal Lal v. Jugdeep Narain Singh* (1877), 4 I. A. 247; 3 Calc. 198; 1 C. L. R. 49; *Hurday Narain Sahu (Baboo) v. Rooder Perkash Misser (Pundit Baboo)* (1883), 11 I. A. 26; 10 Calc. 626.

⁸ See *Miller v. Runga Nath Moulick* (1885), 12 Calc. 389; Act I. of 1872, s. 115. The mere absence of objection does not amount to acquiescence, see *Kamakshi Ammal v. Chakrapany Chettiar* (1907), 30 Mad. 452.

⁹ See *Modhoo Dyal Singh v. Kolbur Singh* (1868), B. L. R. F. B. R. 1018, at p. 1020; 9 W. R. C. R. 511, at p. 512; *Gangabai v. Vamanaji A. Datar* (1864), 2 Bom. H. C. (2nd ed.) 301. As to ratification of the manager or guardian's acts after the ward has attained majority, see *Chetty Culum Comara Venkatachella Reddyer v. Rungasawmy Streemunth Jyengar Bahadoor (Rajah)* (1861), 8 M. I. A. 319; *Prosonno Koomar Bural v. Sajudoor Ruhman (Chowdree)*, Ben. S. D. A., 1853, p. 525; *Ramasawmy Aiyar v. Venkataramaiyan* (1879), 6 I. A. 196; 2 Mad. 91.

to set aside his father's alienation¹ of ancestral property must be brought within twelve years from the time when the alienee takes possession of the property.²

When the coparcener seeking to set aside the alienation, or the family has benefited by the alienation, it may be equitable to compensate the purchaser or mortgagee,³ but there is no equity entitling him to a refund of purchase-money in respect of a share, which is not bound by the purchase.⁴

As to a sale or mortgage by the father, see *post*, p. 300.

As to a sale of an undivided share, see *ante*, pp. 287-289.

Where the purchaser has, to the knowledge of those interested in setting aside the sale, and without their protest,⁵ or without their knowledge, if he believed in good faith that he had an absolute title,⁶ laid out sums for the improvement or benefit of the property, they may be required to compensate him.⁵

The burden is upon the alienee to show that the money has been applied to family purposes; or that the person seeking to set aside the alienation has benefited thereby.⁷

¹ This does not include a sale in execution of a decree: *Issuri Dutt Singh v. Ibrahim* (1881), 8 Calc. 653.

² Act IX. of 1908 (Limitation), Sched. I. art. 126. See *Bunwari Lal v. Daya Sunker Misser* (1909), 13 C. W. N. 815; *Raja Ram Tewary v. Luchmun Persad* (1867), B. L. R. F. B. R. 731; 8 W. R. C. R. 15; *Munbasi Koer v. Nourutton Koer* (1881), 8 C. L. R. 428; *Beer Pershad v. Doorga Pershad*, W. R. 1864, p. 215; *Seetul Pershad Singh (Baboo) v. Gour Dyal Singh (Baboo)* (1864), 1 W. R. C. R. 283 (an alienation by a grandfather); *Beer Kishore Suhye Singh (Baboo) v. Hur Bullub Narain Singh (Baboo)* (1867), 7 W. R. C. R. 502; *Aghori Ramasary Sing v. Cochrane* (1870), 5 B. L. R. App. 14; *Balwantrao v. Ramkrishna* (1901), 3 Bom. L. R. 682.

³ See *Madho Parshad v. Mehrban Singh* (1890), 17 I. A. 194, at pp. 198, 199; 18 Calc. 157, at pp. 163, 164; *Hanuman Dutt Roy v. Kishen Kishor Narayan Sing (Baboo)* (1870), 8 B. L. R. 358; 15 W. R. F. B. 6;

Surub Narain Chowdhry v. Shew Gobind Pandey (1873), 11 B. L. R. App. 29; *Mahabeer Persad v. Ramyad Singh* (1873), 12 B. L. R. 90; 20 W. R. C. R. 192. See, however, *Marappa Gaundan v. Rangasami Gaundan* (1899), 23 Mad. 89.

⁴ *Virabhadra Gowdu v. Gurusankata Churlu* (1898), 22 Mad. 312. See *Sivaganga Zamindar v. Lakshmana* (1885), 9 Mad. 188, at pp. 200, 201.

⁵ *Dattaji Sakharam Rajadhiksh v. Kalba Yese Parabhu* (1896), 21 Bom. 749.

⁶ Act IV. of 1882 (Transfer of Property), s. 51; see *Abhoy Churn Ghose v. Attarmani Dasse* (1908), 13 C. W. N. 931.

⁷ *Madhoo Dyal Singh v. Kolbur Singh* (1868), B. L. R. F. B. R. 1018; 9 W. R. C. R. 511, differing from *Muddun Gopal Thakoor v. Ram Buksh Pandey* (1863), 6 W. R. C. R. 71; *Hanuman Dutt Roy v. Kishen Kishor Narayan Sing (Baboo)* (1870), 8 B. L. R. 358; 15 W. R. F. B. R. 6.

CHAPTER VIII.

THE DEBTS OF A FATHER UNDER THE MITAKSHARA LAW.

Duty of son
to pay debts
of father.

THE Hindu law imposes upon a son, and grandson, the duty of paying the debts of his father, and paternal grandfather,¹ from whom he has not separated,² provided that they have not been incurred for immoral or illegal purposes,³ or are barred by the law of limitation.⁴

As according to Hindu ideas a man and his three male paternal ancestors are the same person in different bodies, there would be a similar liability to pay the debts of a grandfather,⁵ but by a special rule of limitation the liability does not extend beyond the grandson.⁶

“By the Hindu law, the freedom of the son from the obligation to discharge the father's debt has respect to the nature of the debt, and not to the nature of the estate, whether ancestral or acquired by the creator of the debt.”⁷ Although under the Mitakshara system of law, the father takes no greater interest than his son in coparcenary property he can pay his personal debts out of the income of such property,⁸ and can bind his sons and grandsons,⁹ whether they be minors or adults,¹⁰ by a charge or alienation of the coparcenary estate, or of any portion

¹ Colebrooke's "Digest," vol. i. pp. 267, 334; "Narada Smriti," chap. iii. paras. 4, 6.

² *Fakir Chand v. Daya Ram* (1902), 25 All. 67.

³ Colebrooke's "Digest," pp. 300, 305, 309, 311.

⁴ *Subramania Ayyar v. Gopala Aiyar* (1909), 33 Mad. 308.

⁵ See note to Edition of "Narada Smriti" in Sacred Books of the East, vol. xxxiii. pp. 43, 44.

⁶ See Ghose's "Hindu Law," 2nd ed., pp. 417, 418.

⁷ *Hunooman Persaud Panday v. Munraj Koonweree* (*Mussumat Babo-*

ooc) (1856), 6 M. I. A. 393, at p. 421; 10 W. R. C. R., note to p. 81; *Girdharee Lall v. Kantoo Lal* (1874), 1 I. A. 321, at p. 331; 14 B. L. R. 187, at p. 197; 22 W. R. C. R. 56, at p. 58.

⁸ This follows from his power to charge and sell.

⁹ It does not bind any one else, as, for instance, a nephew; *Gangulu v. Ancha Bapulu* (1881), 4 Mad. 73; *Ram Ratan v. Lachman Das* (1908), 30 All. 460.

¹⁰ *Phul Chand v. Man Singh* (1882), 4 All. 309; *Baso Kooer v. Hurry Dass* (1882), 9 Calc. 495, at p. 501; 12 C. L. R. 292, at p. 297.

thereof, for the purpose of paying such of his debts,¹ which he has incurred before the date of such charge or alienation,² provided that such debts have not been incurred for an illegal or immoral purpose or consideration.³

This applies to the alienation of a *babuana* grant.⁴ Sons are bound whether they consent or not.⁵

“When the father alienates the property he exercises the power of alienation which the sons would have exercised in discharge of their pious duty which they owed to him; he is virtually alienating the property for them and on their behalf in discharge of their duty in accordance with the power given to

¹ This does not apparently include a claim to damages, see *Pareman Das v. Bhattu Mahton* (1897), 24 Calc. 672.

² *Venkataramanya Pantulu v. Venkataramana Doss Pantulu* (1905), 29 Mad. 200; *Chandradeo Singh v. Mata Prasad* (1909), 31 All. 176; *Kali Shankar v. Nawab Singh* (1909), *ibid.* 507; *Sitaram Pamist (Shri) v. Harihar Pandit (Shri)* (1910), 35 Bom. 169; 12 Bom. L. R. 910; *Khalilul Rahman v. Gobind Pershad* (1892), 20 Calc. 328; *Kishun Pershad Chowdhry v. Tipan Pershad Singh* (1907), 34 Calc. 735; 11 C. W. N. 613; *Surja Prasad v. Golab Chand* (1900), 27 Calc. 762; *Laljee Sahoy v. Fakeer Chand* (1880), 6 Calc. 135; 7 C. L. R. 97; *Luchman Dass v. Giridhar Chowdhry* (1880), 5 Calc. 855; 6 C. L. R. 470. This will include a prior debt due by the father to the person to whom he mortgaged or conveyed family property, *Badri Prasad v. Madan Lal* (1893), 15 All. 75, at p. 80. It does not include a liability as surety, *Hira Lal Marwari v. Chandrabali Haldarin* (1908), 13 C. W. N. 9.

³ *Hunooman Persaud Panday v. Munraj Koonweree (Mussamut Babooee)* (1856), 6 M. I. A. 393, at p. 421; 18 W. R. C. R. 81, note; *Ramphul Singh v. Degnarian Singh* (1881), 8 Calc. 517; 10 C. L. R. 489; *Trimback Balkrishna v. Narayan Damoda Dabholkar* (1884), 8 Bom. 481; *Muddun Gopal Lall v. Gowrunbutty*

(*Mussamut*) (1875), 15 B. L. R. 264; 23 W. R. C. R. 365; *Adurmoni Deyi v. Sib Narain Kur (Chowdhry)* (1877), 3 Calc. 1; *Ponnappa Pillai v. Pappuvayyengar* (1881), 4 Mad. 1; *Gangulu v. Ancha Bapulu* (1881), 4 Mad. 73; *Ponnappa Pillai v. Pappuvayyengar* (1885), 9 Mad. 343; *Lakshman Ram Chandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 498; *Kastur Bhavani v. Appa* (1876), 5 Bom. 621; *Sadashiv Dinkar Joshi v. Dinkar Narayan Joshi* (1882), 6 Bom. 520; *Mahomad Ally v. Jehangir* (1900), 2 Bom. L. R. 59; *Ramchandra v. Fakirappa* (1900), *ibid.* 450; *Darsu Pandey v. Bikarmajit Lal* (1880), 3 All. 125; *Hasmat Rai (Koer) v. Sunder Das* (1885), 11 Calc. 396; *Gunga Pershad v. Sheodyal Singh* (1879), 5 C. L. R. 224, differing from *Bhekharain Singh v. Januk Singh* (1877), 2 Calc. 438; *Yenamandra Sitaramasami v. Midatana Sanyasi* (1883), 6 Mad. 400; *Pran Krishna Tewary v. Jadu Nath Trivedy* (1898), 2 C. W. N. 603; *Hardai Narain v. Haruck Dhari Singh* (1882), 12 C. L. R. 104; *Narayana Charya v. Narso Krishna* (1876), 1 Bom. 262; *Wajed Hossein (Shah) v. Nanku Singh (Baboo)*, 25 W. R. C. R. 311.

⁴ *Durgadut Singh v. Rameshwar Singh Bahadur (Maharajah Sir)* (1909), 36 L. A. 176; 36 Calc. 943; 13 C. W. N. 1013; 11 Bom. L. R. 901.

⁵ *Phul Chand v. Man Singh* (1882), 4 All. 309.

him by Hindu law." So the father cannot alienate so as to bind the interest of a son, whose interest in the property has been attached in execution of a decree.¹

A creditor or alienee, claiming under such charge or alienation, would have to prove that the antecedent debt existed, or that after due inquiries he, in good faith, believed that it existed.²

As to a suit for specific performance of an agreement by a father to sell family property, see *Srinivasa Reddi v. Sivarama Reddi* (1908), 32 Mad. 320; *Kosuri Ramaraju v. Ivalury Ramalingam* (1903), 26 Mad. 74.

The creditor or alienee need not prove necessity, or inquiries as to necessity,³ but if he does so his case will be stronger.

A purchaser in execution of a decree need not prove any inquiry.⁴

The burden is then shifted upon the son to prove that the particular debt was contracted for an illegal or immoral purpose, and that the purchaser had notice, or upon reasonable inquiry might have discovered, that it was so contracted.⁵ He can put forward such defence even where the money had been borrowed from a third party to pay off such debt.⁶

It is not sufficient for him to show that the father was of licentious or extravagant habits.⁷

¹ *Subraya v. Nagappa* (1908), 33 Bom. 264; 10 Bom. L. R. 1206.

² *Subramanya v. Sudasiva* (1884), 8 Mad. 75. See *Gurusami Sastrial v. Ganapathia Pillai* (1882), 5 Mad. 337; *Yenamandra Sitaramasami v. Midatana Sanyasi* (1883), 6 Mad. 400; *Chinnaya v. Perumal* (1889), 13 Mad. 51; *Jamsetji N. Tata v. Kashinath* (1901), 26 Bom. 326, at p. 336; 3 Bom. L. R. 898; *Bhowna (Mussumat) v. Roop Kishore* (1873), 5 N. W. P. H. C. 89; *Maharaj Singh v. Balwant Singh* (1906), 28 All. 508, at p. 541. Act IV. of 1882, s. 38, ante, pp. 279, 280.

³ *Babu Singh v. Bihari Lal* (1908), 30 All. 156; see *Debi Dat v. Judu Rai* (1902), 24 All. 459; *Maharaj Singh v. Balwant Singh* (1906), 28 All. 508.

⁴ *Bhagbut Pershad v. Girja Koer (Mussumat)* (1888), 15 I. A. 99; 15 Calc. 717.

⁵ *Girdharee Lall v. Kantoo Lall* (1874), 1 I. A. 321; 14 B. L. R. 187; 22 W. R. C. R. 56; *Suraj Bansi Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88, at p. 106; 5 Calc. 148, at p. 171; 4 C. L. R. 226, at p. 238; *Natasayyan v. Ponnusami* (1892), 16 Mad. 99; *Bhowna (Mussumat) v. Roop Kishore* (1873), 5 N. W. P. 89; *Joharmal v. Eknath* (1899), 24 Bom. 343; 1 Bom. L. R. 839; *Matadin v. Gayadin* (1909), 31 All. 599; *Yenamandra Sitaramasami v. Midatana Sanyasi* (1883), 6 Mad. 400. See *Bhagbut Pershad v. Girja Koer (Mussumat)* (1888), 15 I. A. 99; 15 Calc. 717; *Kooldeep Koer (Mussumat) v. Runjeet Singh* (1875), 24 W. R. C. R. 231; *Ram Sahoy Singh v. Mohabeer Pershad* (1876), 25 W. R. C. R. 185.

⁶ *Maharaj Singh v. Balwant Singh* (1906), 28 All. 508.

⁷ *Babu Singh v. Bihari Lal* (1908),

"When ancestral property has passed out of the family either under a conveyance executed by the father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the latter's debt, his sons by reason of their duty to pay their father's debts cannot recover that property, unless they show that the debts were of a kind for which they would not have been liable, and that the purchasers had notice that they were so contracted . . . the purchasers at an execution sale, being strangers to the suit, if they have not notice that the debts were so contracted, are not bound to make inquiry beyond what appears on the surface of the proceedings."¹

A son who was not born at the time that the debt was originally incurred² cannot dispute a mortgage made to pay off the debt.³

Where the son is only able to prove that a portion of the debt was incurred for illegal or immoral purposes, the land would apparently stand charged for the remainder of the money.⁴

The exception is based upon certain texts which are to be found in Colebrooke's "Digest." Vrihaspati says,⁵ "The sons are not compellable to pay sums due by their father for spirituous liquors, for losses at play, for promises made without any consideration, or under the influence of lust⁶ or of wrath; or sums for which he is a surety (except in the cases before mentioned⁷), or a fine, or a toll,⁸ or the balance of either." There are other similar texts.⁹

The exception as to sums for which the father is liable as surety applies apparently to cases of security for appearance, for keeping the peace, or for good behaviour.¹⁰ Where the father was surety for a debt, the liability

30 All. 156; *Sita Ram v. Zalim Singh* (1886), 8 All. 231; *Hanuman Singh v. Nanak Chand* (1884), 6 All. 193; *Budree Lall v. Kanteer Lall* (1875), 23 W. R. C. R. 260; *Bhagbut Pershad v. Girja Koer (Mussumat)* (1888), 15 I. A. 99; 15 Calc. 717; *Vasudev Morbhat Kale v. Krishnuji Ballal Gokhale* (1895), 20 Bom. 534; *Chintamanrav Mehendale v. Kashinath* (1889), 14 Bom. 320; *Subramanya v. Sadasiva* (1884), 8 Mad. 75; *Kishan Lal v. Garuruddhwaraj Prasad Singh* (1899), 21 All. 238; *Sadashiv Dinkar Joshi v. Dinkar Narayan Joshi* (1882), 6 Bom. 520.

¹ *Suraj Bunsu Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88, at p. 106; 5 Calc. 148, at p. 171; 4 C. L. R. 226, at p. 238; *Bhagbut Pershad v. Girja Koer (Mussumat)* (1888), 15 I. A. 99; 15 Calc. 717; *Meenakshi Naidu v. Immudi Kanaka Ramaya Koonden* (1888), 16 I. A. I.; 12 Mad. 142.

² See *ante*, pp. 290, 291.

³ See *Bholanath Kheltry v. Kartick Kissen Das Kheltry* (1907), 34 Calc. 372; 11 C. W. N. 462.

⁴ Cf. *ante*, pp. 284, 293.

⁵ Colebrooke, "Digest," i. p. 305.

⁶ For an illustration of cases of these kinds, see *Maharaj Singh v. Balwant Singh* (1906), 28 All. 508.

⁷ What these words within brackets mean is not very clear.

⁸ This expression includes money paid for a bride, see *Keshow Rao Diwakur v. Naro Junardhun Patunkur* (1822), 2 Borr. 194, at pp. 200, 201. Strange says (vol. i. p. 167), "that the reason why tolls and fines are excepted may be, that they are to be regarded as ready money payments, for which credit will have been given, at the risk of him by whom they ought to have been received."

⁹ Colebrooke, "Digest," vol. i. pp. 247, 300, 305, 307, 311; "Narada Smriti," chap. iii. para. 11.

¹⁰ Colebrooke, "Digest," vol. i. pp. 246, 247.

of his son has been declared in several cases,¹ but it has been held that the liability only occurs when the father received some consideration for being surety.²

Crime or
fraud.

If a criminal offence or fraud, or an act which the father as a decent and respectable man ought not to have incurred,³ was the origin of the debt, the sons would not be obliged to recognize it; for instance, a decree for the value of property obtained by theft,³ a decree for money, or for the value of property misappropriated.⁴ This would not apply to a case of money being merely wrongfully retained,⁵ or not accounted for,⁶ or to a decree for mesne profits obtained against the father by a person whom the father wrongfully kept out of possession of immovable property,⁷ or to costs of litigation payable by him,⁸ and unconnected with a criminal offence.⁹

Similarly, fines need not be paid out of the family property. "Neither sins nor the expiation of them are hereditary."¹⁰

Interest.

The son's and grandson's liability extends also to the payment of interest,¹¹ the amount of interest being determinable by the law of the place. Where the rule of *damdupat*¹² is not in force, that rule cannot be put in force.¹³

Power limited
to father.

This power which is given to the father cannot be exercised by any other member of the family even in the father's absence.¹⁴

¹ *Chettikulam Venkitachala Reddiar v. Chettikulam Kumara Venkitachala Reddiar* (1905), 28 Mad. 377; *Benares (Maharajah of) v. Ramkumar Misir* (1904), 26 All. 611; *Tukarambhat v. Ganguram Mulchand Gujjar* (1898), 23 Bom. 454; *Sitaramayya v. Venkatramanna* (1888), 11 Mad. 373. See *Hira Lal Marwari v. Chandrabuli Haldarin* (1908), 13 C. W. N. 9.

² *Narayan v. Venkatacharya Balakrishnacharya* (1904), 28 Bom. 408; 6 Bom. L. R. 434. It is submitted that in this matter there is no difference between the case of a son and that of a grandson.

³ *Durbar Khachar v. Khachar Harsur* (1908), 32 Bom. 348; 10 Bom. L. R. 297.

⁴ *Pareman Das v. Bhattu Mahton* (1897), 24 Calc. 672.

⁵ *Mahabir Prasad v. Basdeo Singh* (1884), 6 All. 234. See *Chandra Sen v. Ganga Ram* (1880), 2 All. 899; *McDowell and Co. v. Ragava Chetty* (1903), 27 Mad. 71; *Jaikumar v. Gauri Nath* (1906), 28 All. 718, at p. 720, where it was held that a promis-

sory note given to satisfy a claim for money misappropriated did not create an illegal or immoral debt.

⁶ *Narasayyan v. Ponnusami* (1892), 16 Mad. 99; *Kanemar Venkappayya v. Krishna Churiya* (1907), 31 Mad. 161.

⁷ *Gurunatham Chetty v. Raghavelu Chetty* (1908), 31 Mad. 472.

⁸ *Peary Lal Sinha v. Chandicharan Sinha* (1906), 11 C. W. N. 163.

⁹ *Puryug Sahu v. Kasi Sahu* (1910), 14 C. W. N. 659. Money borrowed to defend a suit for defamation has been held to be a binding debt, *Sumer Singh v. Liladhar* (1911), 33 All. 472.

¹⁰ A Bengal case referred to in *Nhance v. Hureeram Dhoolubh* (1814), 1 Borr. 84, at p. 90.

¹¹ See *post*, p. 307.

¹² The rule of Hindu law forbidding the recovering of interest at any one time in excess of the amount of principal. *Ante*, p. 6.

¹³ *Pran Krishna Tewary v. Jadu Nath Trivedy* (1898), 2 C. W. N. 603.

¹⁴ *Hari Premji (Patel) v. Hakamchand* (1884), 10 Bom. 363.

It has been held that when the father is insolvent, the official assignee has the same power as the father.¹

Except for the purpose of discharging such antecedent debt, or in case of a valid necessity,² a father has no power to alienate or charge the coparcenary property,³ and a sale or mortgage, which has no such justification, can be set aside.⁴

Where a mortgage is given in respect of a debt not antecedent to the transaction,⁵ the Bengal High Court has treated it as a secured debt against the father's interest,⁶ but according to the Allahabad High Court it cannot be so treated.⁷

Mortgage for other debt.

The view of the latter Court is, it is submitted, correct.⁸ As a mortgage of an undivided share is permissible in Bombay and Madras,⁹ in those Presidencies, the debt might be treated as a secured debt against the father's intent.

So far as the sons are concerned, the amount will be treated as an unsecured debt, and can be enforced against the sons or grandsons by a suit, the decree in which can be executed against

¹ *Fakirchand, Motichand v. Motichand Hurruckchand* (1883), 7 Bom. 438; *Rangayya Chetti v. Thanikachalla Mudali* (1895), 19 Mad. 74. In the former case it was further held that the official assignee can deal with the estate after the death of the father. It is submitted that this is not good law.

² *Ante*, pp. 273, 274.

³ *Chinnaya v. Perumal* (1889), 13 Mad. 51.

⁴ See *Ram Dayal v. Ajudhia Prasad* (1906), 28 All. 328; *Beer Kishore Suhye Singh (Baboo) v. Ilur Bullub Narain Singh (Baboo)* (1867), 7 W. R. C. R. 502; *Chandra Deo Singh v. Mata Prasad* (1909), 31 All. 176.

⁵ See *Luchmun Dass v. Giridhur Chowdhry* (1880), 5 Calc. 855; 6 C. L. R. 473; *Laljee Sahoy v. Fakeer Chand* (1880), 6 Calc. 135, at p. 138; 7 C. L. R. 97, at p. 100; *Gunga Prasad v. Ajudhia Pershad* (1881), 8 Calc. 131; 9 C. L. R. 417; *Khalilul Rahman v. Gobind Pershad* (1892), 20 Calc. 328; *Debi Dal v. Jadu Rai* (1902), 24 All. 459, differing from *Jamna v. Nain Sukh* (1887), 9 All. 493; *Sami Ayyangar v. Ponnammal* (1897), 21 Mad. 28; *Hanuman Kamat v. Dowlut*

Mundar (1884), 10 Calc. 528; *Kishun Pershad Chowdhry v. Tipan Pershad Singh* (1907), 34 Calc. 735; 11 C. W. N. 613, dissenting from *Maheswar Dutt Tewari v. Kishun Singh* (1907), 34 Calc. 184; 11 C. W. N. 294, in which latter case it was held, it is submitted erroneously, that the sons were bound by a mortgage not in respect of a debt, which was antecedent to the transaction. The decisions relied upon in the latter case were in cases relating to sales in execution of decrees, and therefore stand upon a different footing. As to impartible estates, see *Vera Soorappa Nayani v. Errappa Naidu* (1906), 29 Mad. 484.

⁶ *Kishun Pershad Chowdhry v. Tipan Pershad Singh* (1907), 34 Calc. 735; 11 C. W. N. 613; *Khalilul Rahman v. Gobind Pershad* (1892), 20 Calc. 328, at p. 327; see *ante*, p. 289.

⁷ *Chandra Deo Singh v. Mata Prasad* (1909), 31 All. 176; *Kali Shanrar v. Nawab Singh* (1909), 31 All. 507; *Muhammad Muzamil-ullah Khan v. Mithu Lal* (1911), 33 All. 783.

⁸ See *ante*, p. 289.

⁹ *Ante*, p. 287.

the coparcenary property (including the mortgaged property),¹ but in that case the limitation applicable to an unsecured debt would apply.²

So (except so far as questions of limitation are concerned, and except in cases where the property had been dealt with before suit) there is generally no substantial difference between the remedy on a mortgage which is based on an antecedent debt and a mortgage given in consideration of a payment at the time.³

In some of the older cases it was held that where the debt was not antecedent to the mortgage, the creditor had no rights against the coparcenary property except in case of necessity.⁴

Where there is a sale by the father, not on account of an antecedent debt, the sons cannot, unless the money was obtained for illegal or immoral purposes, set it aside without refunding the amount of the purchase-money, as the purchase-money would be a debt which they would be liable to pay.⁵

The question as to whether the mortgage or transfer passed the whole property, or only the father's interest therein, depends upon what the parties contracted about.⁶

This may be determined not only by the terms of the document, but also by the surrounding circumstances. The burden is upon the person claiming under the mortgage or sale.⁷

As to whether sons can be bound by a decree enforcing a mortgage on coparcenary property made by their father, and

Question whether alienation passed property.

Whether sons bound if not parties to suit.

¹ *Dattatraya v. Vishnu* (1911), 36 Bom. 68; 13 Bom. L. R. 1161; *Chintamanrav v. Kashinath* (1889), 41 Bom. 320.

² *Surja Prasad v. Golab Chand* (1900), 27 Calc. 762, differed from in *Maheshwar Dutt Tewari v. Kishun Singh* (1907), 34 Calc. 184; 11 C. W. N. 294, see *ante*, p. 299, note 5; *Hira Lal Marwari v. Chandrabali Haldarin* (1908), 12 C. W. N. 9. See *Ran Singh v. Sobha Ram* (1907), 29 All. 544. As to limitation, see *ante*, pp. 292, 293, and *post*, p. 307.

³ See *Chidambara Mudaliar v. Koothaperumal* (1903), 27 Mad. 326, at p. 328. In this case it was said, "on principle it is difficult to make any distinction between a mortgage given for an antecedent debt and a mortgage given for a debt then incurred, for in either case the debt is binding upon the son and the

enforcement of the security exonerates the son from the burden of the father's debt." See *Gunga Pershad v. Sheodyal Singh* (1881), 9 C. L. R. 417; judgment of Banerji, J., in *Chandra-deo Singh v. Mata Prasad* (1909), 31 All. 176, at p. 216.

⁴ *Hanuman Kamat v. Dowlut Munder* (1884), 10 Calc. 528; *Lal Singh v. Deonarain Singh* (1886), 8 All. 279; *Arunachala Chetti v. Munisami Mudali* (1883), 7 Mad. 39.

⁵ *Hasmat Rai (Koer) v. Sunder Das* (1885), 11 Calc. 396. See *post*, pp. 306, 307, and *Nathu Lal Chowdhry v. Chadi Sahi* (1869), 4 B. L. R. A. C. 15; 12 W. R. C. R. 447.

⁶ See *Simbhunath Panday v. Golab Singh* (1887), 14 I. A. 77, at p. 83; 14 Calc. 572, at p. 579.

⁷ *Narayanrav Damodar v. Balkrishna Mahadeo*, Bom. P. J., 1881, p. 293.

passed in a suit to which they are not parties, see *ante*, pp. 268–270.

Where the sons are not parties to the suit, they are entitled to have an opportunity, either in a fresh suit or in proceedings for execution of the decree,¹ of raising such questions and of asserting such rights as they could have raised and asserted if they had been made parties.

They can show that the debt was incurred for illegal or immoral purposes.²

They can get a right to redeem,³ but a suit for redemption does not lie simply on the ground they have not been made parties.⁴ A son born after a decree for sale would have no right of redemption.⁵

“Independently of the” Transfer of Property Act (or of the Civil Procedure Code), “the position of a purchaser, who in a sale in execution of a decree against the father bought the entirety of the estate, is the same as regards the son, whether the decree was a mortgage decree or a decree for money. In either case, all that the son can claim is that not having been a party to the sale or the proceedings which led up to it, he should have an opportunity of showing that there was in reality no such debt as to justify the sale.”⁶

A son who was not joint with the father at the time of the suit would be entitled to redeem.⁷

Where the son has been a party to the suit he could not, of course, raise in another suit any question as to the validity of the mortgage or sale.

When the sons are not parties to the suit against their father, the creditor may institute another suit against them.⁸

¹ See *Umaheswara v. Singaperumal* (1885), 8 Mad. 376; *Chander Pershad v. Sham Koer* (1905), 33 Cal. 676. It has been held that the son cannot raise the question in the same suit where he has been made a party to the suit as representing his father: *Hira Lal Sahu v. Parmeshar Rai* (1899), 21 All. 356.

² *Ramkrishna v. Vinayak Narayan* (1910), 34 Bom. 354; 12 Bom. L. R. 219; *Mata Din v. Gaya Din* (1909), 31 All. 599.

³ See *Ponnappa Pillai v. Pappuvayyangan* (1881), 4 Mad. 1, at p. 69; *Trimbak Balkrishna v. Narayan Damodar Dabholkar* (1884), 8 Bom. 481, at p. 488; *Ramasamayyan v. Virasami Ayyar* (1898), 21 Mad. 222.

⁴ *Lal Singh v. Pulandar Singh*

(1905), 28 All. 182; *Debi Singh v. Jia Ram* (1902), 25 All. 214; *Kehri Singh v. Chunni Lal* (1911), 33 All. 436.

⁵ *Mulhuraman Chetti v. Ettapasami* (1899), 22 Mad. 372; *ante*, pp. 290, 291, 297.

⁶ *Ramasamayyan v. Virasami Ayyar* (1898), 21 Mad. 222, at p. 224; *Kunhali Beari v. Keshava Shanbaga* (1887), 11 Mad. 64, at p. 76. *Karan Singh v. Bhup Singh* (1904), 27 All. 16. See *post*, p. 302.

⁷ See *Trimbak Balkrishna v. Narayan Damodhar Dabholkar* (1884), 8 Bom. 481.

⁸ See *Ran Singh v. Sobha Ram* (1907), 29 All. 544; *Dharam Singh v. Anjan Lal* (1899), 21 All. 301; *Aribandra v. Dorasami* (1888), 11 Mad. 413.

Rights of sons
when not
parties.

When interests of sons pass by sale in execution.

The interests of the sons pass in a sale of coparcenary property in execution of a decree against their father,¹ except only ²—

1. When their interests are not sold.³

2. When the sons prove that the debt was contracted for an illegal or immoral purpose,⁴ and the execution creditor purchases, or, if a stranger purchases, and has notice of, or upon inquiry could have ascertained, the⁵ illegal or immoral character of the debt upon which the decree was based.⁵

They could also dispute the fact of the debt.⁶

Decree for money.

A decree for a mere money debt of the father,⁷ not illegal or immoral, and whether incurred for family purposes or not, may be enforced in his lifetime by an execution sale of the entire coparcenary estate,⁸ and is binding on the sons, whether they were or were not parties to the suit.⁹ They are, however,

¹ *Muddun Thakoor v. Kantoo Lall* (1874), 1 I. A. 321; 14 B. L. R. 187; 22 W. R. C. R. 56; *Nanomi Babuasin (Mussumat) v. Modun Mohun* (1885), 13 I. A. 1; 13 Calc. 21; *Bhagbut Pershad v. Girja Koer (Mussumat)* (1888), 15 I. A. 99; 15 Calc. 717; *Meenakshi Naidu v. Immudi Kanaka Ramaya Kounden* (1888), 16 I. A. 1; 12 Mad. 142; *Cooverji Hirji v. Dewsey Bhoja* (1893), 17 Bom. 718; *Ramphul Singh v. Degnarun Singh*, 8 Cal. 617; 10 C. L. R. 489; *Beni Parshad v. Puran Chand* (1895), 23 Calc. 262, at p. 274; *Mahabir Prasad v. Basdeo Singh* (1884), 6 All. 234; *Gonesh Pandey v. Dabee Doyal Singh* (1879), 5 C. L. R. 36.

² *Mata Din v. Ganga Din* (1909), 31 All. 599.

³ See *post*, p. 305.

⁴ See *ante*, pp. 296, 297.

⁵ See *Joharmal v. Eknath* (1899), 24 Bom. 343; 1 Bom. L. R. 839; *Natasayyan v. Ponnusami* (1892), 16 Mad. 99; *ante*, pp. 296, 297.

⁶ See *Nanomi Babuasin (Mussumat) v. Modun Mohun* (1885), 13 I. A. 1, at p. 18; 13 Calc. 21, at p. 36; *ante*, p. 296.

⁷ This includes a decree for the unsatisfied balance of a mortgage debt, *Hari Ram v. Bishnath Singh*

(1900), 22 All. 408.

⁸ *Meenakshi Naidu v. Immudi Kanaka Ramaya Kounden* (1888), 16 I. A. 1; 12 Mad. 142; *Khalilul Rahman v. Gobind Pershad* (1892), 20 Calc. 328; *Sheo Proshad v. Jung Bahadur* (1882), 9 Calc. 389; 12 C. L. R. 494; *Narayana Charya v. Narso Krishna* (1876), 1 Bom. 262; *Luchmun Dass v. Giridhar Chowhry* (1880), 5 Calc. 855; 6 C. L. R. 473; *Bhowna (Mussumat) v. Roop Kishore* (1873), 5 N. W. P. 89.

⁹ *Muddun Thakoor v. Kantoo Lall* (1874), 1 I. A. 321, at p. 338; 14 B. L. R. 187, at p. 199; 22 W. R. C. R. 56, at p. 59. The facts of this case are to be found in *Ponnappa Pillai v. Pappuwayyangan* (1885), 9 Mad. 343, at pp. 345–349; *Nanomi Babuasin v. Modun Mohun* (1885), 13 I. A. 1; 13 Calc. 21; *Suraj Buns Koer v. Sheo Proshad Singh* (1879), 6 I. A. 88, at p. 106; 5 Calc. 148, at p. 171; 5 C. L. R. 226, at p. 238; *Bhagbut Pershad v. Girja Koer (Mussumat)* (1888), 15 I. A. 99; 15 Calc. 717; *Meenakshi Naidu v. Immudi Kanaka Ramaya Kounden* (1888), 16 I. A. 1; 12 Mad. 142; *Karan Singh v. Bhup Singh* (1904), 27 All. 16; *Mathura Prasad v. Ramchandra Rao* (1902), 25 All. 57; *Mallesam Naidu v.*

entitled in case they were not parties to contest the binding nature of the debt in another suit,¹ or by a claim under the Civil Procedure Code (Act V. of 1908), Sched. I., Order XXI. r. 57.²

In two cases the Allahabad High Court³ considered that where no sale had taken place, the sons could contest the decree on the sole ground that they were not parties to it, but in a latter case the same Court held that there is no ground for such distinction.⁴

The son's rights do not pass when in contravention of sec. 99 of the Transfer of Property Act⁵ the mortgagee has attached the property in execution of a money decree,⁶ or the sale is otherwise irregular. Irregularity in sale.

A creditor can, after the death of the father, execute the decree against coparcenary property in the hands of the sons.⁷ Execution of decree after death of father.

The provisions of the Civil Procedure Code, 1908, on this subject are as follows :

"Sec. 50. (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased. Legal representative.

"(2) Where the decree is executed against such legal representative he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of ; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

"Sec. 52. (1) Where the decree is passed against a party as the legal representative of a deceased person, and the decree be for money to be Enforcement of decree against legal representative.

Jugala Panda (1899), 23 Mad. 292 ; *Natasayyan v. Ponnusami* (1892), 16 Mad. 99 ; *Kunhali Beari v. Keshav Shanbaga* (1887), 11 Mad. 64 ; *Ramanadan v. Rajagopala* (1889), 12 Mad. 309 ; *Ramdul Sing v. Mahender Prasad* (1882), 9 Calc. 452 ; 12 C. L. R. 47 ; *Dattatraya v. Vishnu* (1911), 30 Bom. 68 ; 13 Bom. L. R. 1161. See *Shiam Lal v. Ganeshi Lal* (1905), 28 All. 288, where the suit had been dismissed as against the son.

¹ See *Ramasami Nadan v. Ulaganatha Goundan* (1898), 22 Mad. 49 ; *Gopalasami Pillai v. Chokalingam Pillai* (1881), 4 Mad. 320 ; *Derji v. Sambhu* (1899), 24 Bom. 135 ; *Jagabhai Lalubhai v. Vijbhukandas Jagjivandas* (1886), 11 Bom. 37 ; *Karan*

Singh v. Bhup Singh (1904), 27 All. 16.

² *Shivram v. Sakharani* (1908), 33 Bom. 39 ; 10 Bom. L. R. 39 ; *Umed Hathising v. Goman Bhaiji* (1895), 20 Bom. 385, at p. 389 ; *Ram Dayal v. Durga Singh* (1890), 12 All. 209. See *Venkataramayyan v. Venkatasubramania Dikshatar* (1878), 1 Mad 358.

³ *Ram Dayal v. Durga Singh* (1890), 12 All. 209 ; *Jagraj Singa v. Ajudhia Prasad* (1886), 9 All. 142.

⁴ *Karan Singh v. Bhup Singh* (1904), 27 All. 16.

⁵ Act IV. of 1882.

⁶ *Muthuraman Chetti v. Ettapasanni* (1899), 22 Mad. 372.

⁷ Act V. of 1908 (Civil Procedure), s. 53.

paid out of the property of the deceased, it may be executed by the attachment and sale of any such property :

"(2) Where no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

Liability of
ancestral
property.

"Sec. 53. For the purposes of sec. 50 and sec. 52,¹ property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative." ¹

As the law stood before the 1st January, 1909, where the property had been attached in the father's lifetime he could proceed ; ² but where there was no such attachment, a new suit was necessary according to the High Courts of Madras and Allahabad, and according to some of the Bengal decisions.³ It was held in Bombay,⁴ and by the majority of a Full Bench in Bengal,⁵ that the decree could be executed against the sons.

The carrying out of a mortgage decree stood upon the same footing.⁶

If the coparcenary property has been charged by the decree, proceedings in execution could be taken against the sons after the death of the father.⁷

When sons'
interests pass
by sale.

The question whether the sale in execution^{*} of a decree against the father passed the whole interest of the family, or only the father's undivided interest, depends upon the terms of the proceedings in execution. The Court will look at the substance of the proceedings to see what was intended to be

¹ *Sankar Nath Pundit v. Madan Mohan Das* (1909), 14 C. W. N. 298.

² *Peary Lal Sinha v. Chandi Charan Sinha* (1906), 11 C. W. N. 163; *Beni Pershad v. Parbati Koer* (1892), 20 Calc. 895.

³ *Lachmi Narain v. Kunji Lall* (1894), 16 All. 449; *Jagannath Prasad v. Sitaram* (1888), 11 All. 302; *Kali Charan v. Jewat* (1905), 28 All. 51; *Zamindar of Karvetnagar v. Trustee of Tirumelai* (1909), 32 Mad. 429; *Natasayyan v. Ponnusami* (1892), 16 Mad. 99; *Ariabudra v. Dorasami* (1888), 11 Mad. 413; *Venkatarama v. Senthivelu* (1890), 13 Mad. 265; *Karnataka Hanumantha v. Andukuri Hanumayya* (1882), 5 Mad. 232; *Juga*

Lal Chaudhuri v. Audh Behari Prosad Singh (1900), 6 C. W. N. 223; *Suraj Prosad (Lala) v. Golab Chund* (1901), 28 Calc. 517; *Kali Krishna Sarkar v. Rughunath Deb* (1903), 31 Calc. 224.

⁴ *Govind Krishna Gujar v. Sakharan Naraya* (1904), 28 Bom. 383; 6 Bom. L. R. 344; *Umed Hathising v. Goman Bhaiji* (1895), 20 Bom. 385.

⁵ *Amar Chandra Kundu v. Sebak Chand Chowdhury* (1907), 34 Calc. 642; 11 C. W. N. 593.

⁶ *Beni Pershad v. Parbati Koer* (1892), 20 Calc. 895.

⁷ *Sivagiri Zamindar v. Tiruvengada* (1884), 7 Mad. 339; *Ponnappa Pillai v. Pappuvayyengar* (1881), 4 Mad. 1.

sold, and what the purchaser could reasonably think he was buying.¹ It is a mixed question of law and fact.²

It is the duty of the judgment creditor to see that the orders of attachment and sale, or the sale certificate, clearly indicate the sale of all the interests in the property over which the judgment debtor had control.

There is some conflict as to whether there is any presumption that the whole interest passed,³ or whether there is a presumption that the interest of the father only passed.⁴ It is submitted that if there is any burden of proof one way or the other, it is upon the person supporting the sale.⁵

"The purchaser under the execution . . ." is "not bound to go further back than to see that there was a decree against" the father, "that the property was property liable to satisfy the decree, if the decree had been properly given against" him, "and having inquired into that, and having *bonâ fide* purchased the estate under the execution, and *bonâ fide* paid a valuable consideration for the property, the "sons" are not entitled to come in and to set aside all that has been done under the decree and execution, and recover back the estate from the "purchaser."⁶

¹ *Pettachi Chettiar v. Sangili Veera Pandia* (1887), 14 I. A. 84, at p. 85; 10 Mad. 241, at p. 248; *Simbhunath Panday v. Golab Singh* (1887), 14 I. A. 77, at p. 83; 14 Calc. 572, at p. 579; *Abdul Aziz Khan Sahib v. Appayasami Naicker* (1903), 31 I. A. 1; 27 Mad. 131; 8 C. W. N. 180. See *Umbica Prosad Tewary v. Ramsahay Lall* (1881), 8 Calc. 898; 10 C. L. R. 505; *Kagal Ganpaya v. Manjappa* (1888), 12 Bom. 691.

² In the following cases it was held that the interest of the father only passed by the sale: *Deendyal Lal v. Jugdeep Narain Singh* (1877), 4 I. A. 247; 3 Calc. 198; 1 C. L. R. 49; *Simbhunath Panday v. Golab Singh* (1887), 14 I. A. 77; 14 Calc. 572; *Hurday Narain Sahu (Baboo) v. Rooder Perkash Misser (Pundit Baboo)* (1883), 11 I. A. 26; 10 Calc. 626; *Ram Sahai v. Kewal Singh* (1887), 9 All. 672; *Pettachi Chettiar v. Sangili Veera Pandia Chinnathambiar* (1887), 14 I. A. 84; 10 Mad. 241; *Bhikaji Ramchandra Oke v. Yashwantrao Shripat Khopkar* (1884), 8 Bom. 489; *Maruti Sakharum v. Babaji* (1890), 15 Bom. 87; *Beni Parshad v. Puran Chand* (1895), 23 Calc. 262; *Bika Singh v. Lachman Singh* (1880), 2 All. 800; *Chandru Sen v. Ganga Ram* (1880), 2 All. 899; *Bhagwat Dassa v.*

Gouri Kunwar (1880), 7 C. L. R. 218; *Collector of Monghyr v. Hurdai Narain Shakai* (1879), 5 Calc. 425; 5 C. L. R. 112. In the following cases it was held that the interests of the sons passed by the sale: *Bhagbut Pershad v. Girja Koer (Mussumat)* (1888), 15 I. A. 99; 15 Calc. 717; *Meenakshi Naidu v. Immudi Kanaka Ramaya Kounden* (1888), 16 I. A. 1; 12 Mad. 142; *Mahabir Pershad (Rai Babu) v. Markunda Nath Sahai (Rai)* (1889), 17 I. A. 11; 17 Calc. 584; *Cooverji Hirji v. Dewsey Bhoja* (1893), 17 Bom. 718; *Veera Soorappa Nayani v. Errappa Naidu* (1906), 29 Mad. 484; *Kunhali Beari v. Keshava Shanbaga* (1887), 11 Mad. 64; *Sakharamshet v. Sitaramshet* (1886), 11 Bom. 42; *Sadashiv Dinkar Joshi v. Dinkarnarayan Joshi* (1882), 6 Bom. 520. As to a sale under a mortgage decree, see *ante*, pp. 268-270.

³ See *Muhammad Husain v. Dipchand* (1892), 14 All. 191; *Pem Singh v. Partab Singh* (1892), 14 All. 179; *Beni Madho v. Basdeo Patak* (1890), 12 All. 99.

⁴ *Maruti Sakharum v. Babaji* (1890), 15 Bom. 87; *Manohar v. Balwant* (1901), 3 Bom. L. R. 97.

⁵ See *Haza Hira v. Bhaiji Mudan Isahji*, Bom. P. J. 1875, p. 97.

⁶ *Muddun Thakoor v. Kantoo Lall*

"If his debt was of a nature to support a sale of the entirety," the father "might legally have sold it without suit, or the creditor might legally procure a sale of it by suit. All the sons can claim is, that, not being parties to the sale or execution proceedings, they ought not to be barred from bringing the fact or the nature of the debt in a suit of their own. Assuming they have such a right, it will avail them nothing unless they can prove that the debt was not such as to justify the sale. If the expressions by which the estate is conveyed to the purchaser are susceptible of application either to the entirety or to the father's coparcenary interest alone, . . . the absence of the sons from the proceedings may be one material consideration. But if the fact be that the purchaser has bargained and paid for the entirety, he may clearly defend his title to it upon any ground which would have justified a sale if the sons had been brought in to oppose the execution proceedings."¹

Decree against sons.

A decree may be obtained against the sons during the lifetime of their father so as to bind the coparcenary property, provided that the money was not raised for an illegal or immoral purpose.²

Personal liability of father.

Although the coparcenary property may not be liable, the father remains personally liable for a debt.

As to the sale of a share in the coparcenary property, see *ante*, pp. 286-290.

Simple contract debts of father.

The debts of a father, or paternal grandfather, even when not charged upon the estate, must be paid by the son, or grandson, out of the property of the coparcenary in which the debtor was a coparcener, provided such debts have not been incurred for an illegal or immoral purpose.³

(1874), 1 I. A. 321, at p. 334; 14 B. L. R. 187, at p. 200; 22 W. R. C. R. 56, at p. 59. In *Mahabir Prasad v. Basdeo Singh* (1884), 6 All. 234, the Court considered that a statement in the plaint amounted to notice. See *Bhagbut Pershad v. Girja Koer* (*Mussamat*) (1888), 15 I. A. 99; 15 Calc. 317; *Siva Sankara Mudali v. Parvati Anni* (1881), 4 Mad. 96; *Luchmi Dai Koori v. Asman Sing* (1876), 2 Calc. 213; 25 W. R. C. R. 421; *Anooragee Koorer* (*Mussamat*) v. *Bhugobutty Koorer* (1876), 25 W. R. C. R. 148; *Budree Lall v. Kantee Lall* (1875), 23 W. R. C. R. 260. Cf. *Abdool Kureem (Shaikh) v. Javin Ali* (*Syed*) (1872), 1 S. W. R. C. R. 55.

¹ *Nanomi Babuasin (Mussamat) v. Modun Mohun* (1885), 13 I. A. 1, at p. 18; 13 Calc. 21, at p. 36. See *Bhagbut Pershad v. Girja Koer* (*Mussamat*) (1888), 15 I. A. 99; 15 Calc. 317.

² See *Ramasami Nadan v. Ulaganatha Goundan* (1898), 22 Mad. 49; *Ramphul Singh v. Degnarain Singh* (1881), 8 Calc. 517; 10 C. L. R. 489.

³ *Muddun Thakoor v. Kantoo Lall* (1874), 1 I. A. 321; 14 B. L. R. 187; 22 W. R. C. R. 56; *Luchmun Dass v. Giridhur Choudhry* (1880), 5 Calc. 855; 6 C. L. R. 473; *Periasami Mudaliar v. Seetharama Chettiar* (1903), 27 Mad. 243; *Udaram Sitaram v. Ranu Panduji* (1875), 11 Bom. H. C. 76,

This does not include an agreement to pay a sum of money in perpetuity.¹

The liability to pay a debt involves a liability to pay interest.² Interest.

Even during the lifetime of the father the son is liable to the extent of the coparcenary property, or of property of his father which comes into his hands; as, for instance, when the father has abandoned worldly affairs,³ or has been absent for such a time as will raise a presumption as to his death.⁴ Liability of son during father's lifetime.

The limitation for a suit against the son for a debt of his father is as provided by Article 120 of Schedule I. of the Limitation Act,⁵ i.e. six years from the time when the cause of action arose.⁶ Limitation of suit.

It has been held that the right of the creditor to sue the sons accrues during the father's lifetime, and that there is not a new cause of action on his death.⁷

A simple contract debt even of a father is not a charge upon the coparcenary property, or upon his separate property. When the son or heir has alienated the property, the creditor cannot claim his debt against the alienee, except where the alienation has been, to the knowledge of the alienee, made in order to avoid the debt, or with the intention of avoiding it, in which case the remedy of the creditor is against the son or heir personally.⁸ Debt not a charge on property. Effect of alienation.

at pp. 83, 84; *Bhagirathi v. Anantha Charia* (1893), 17 Mad. 268; *Ponnappa Pillai v. Pappuwayangar* (1881), 4 Mad. 1; *Sheo Proshad v. Jung Bahadoor* (1882), 9 Calc. 389; 12 C. L. R. 494; *Velliyammal v. Katha Chetti* (1882), 5 Mad. 61; *Narayana-sami Chetti v. Samidas Mudali* (1883), 6 Mad. 293. This applies equally to an impartible estate. *Muttayan Chettiar v. Sangili Vira Pandia Chinnatumbiar* (1882), 9 I. A. 128; 6 Mad. 1; *Veera Soorappa Nayani v. Errappa Naidu* (1906), 29 Mad. 484.

¹ *Balkrishna v. Janardana* (1904), 6 Bom. L. R. 642.

² *Lachman Das v. Khunnu Lal* (1896), 19 All. 26. See *Saunadanappa v. Shivbasawa* (1907), 31 Bom. 354; ante, p. 298.

³ See Colebrooke's "Digest," vol. i. p. 266.

⁴ An absence of twenty years was

fixed by Vishnu (Colebrooke's "Digest," vol. i. p. 266); but the presumptions as to death now applicable are to be found in ss. 107, 108, of the "Indian Evidence Act" (I. of 1872).

⁵ IX. of 1908. *Hiralal Marwari v. Chandrabati Haldar* (1908), 13 C. W. N. 9.

⁶ *Maharaj Sing v. Balwant Singh* (1906), 28 All. 508, at p. 516; *Narsingh Misra v. Lalji Misra* (1901), 23 All. 206; *Natasayyan v. Ponnu-sami* (1892), 16 Mad. 99; *Ramayya v. Venkataratnam* (1893), 17 Mad. 122.

⁷ *Mallesam Naidu v. Jugala Pandu* (1899), 23 Mad. 292. See *Ramasami Nadan v. Ulaganatha Gowdan* (1898), 22 Mad. 49; *Natasayyan v. Ponnu-sami* (1892), 16 Mad. 99.

⁸ *Zubairtust Khan v. Indurmun* (1867), Agra High Court Full Bench Reports, ed. 1903, p. 71; ed. 1874, p. 55; *Unnopoorna Dassava v. Gunga*

Remedy
limited to
assets.

The debts of the father cannot be recovered from the separate property of a son, even where such property has been the subject of a *bonâ fide* gift to the son by the father. They can only be recovered from the coparcenary property, or from property which was acquired by his sons on his death as his representatives.¹

Liability after
partition.

A creditor cannot enforce the payment of the debt of the father² against property which has been allotted on partition to the son, unless the partition was effected for the purpose of avoiding the father's debts.³

Bengal school.

As under the Bengal school of law sons do not acquire any interest by birth in ancestral property, a father can obviously charge his share in the coparcenary property for the payment of any of his debts, however incurred,⁴ and after his death the payment of his debts can be enforced against the property, whether joint or separate, belonging to him at the time of his decease.

Obligation to
pay debts out
of assets in-
herited, etc.

Apart from the obligation of a son or grandson to pay the debts of his father or grandfather out of coparcenary property, the Hindu law, like other systems of law, requires the person who succeeds to the property of another as heir or devisee, to pay the debts of such other person to the extent of the assets

Narain Paul (1865), 2 W. R. C. R. 296; *Jamiyatram Ramchandra v. Parbhudas Hathi* (1872), 9 Bom. H. C. 116; *Gnanabhai v. C. Srinivasa Pillai* (1868), 4 Mad. H. C. 84; *Greender Chunder Ghose v. Mackintosh* (1879), 4 Calc. 897; 4 C. L. R. 193; cf. Act IV. of 1882 (Transfer of Property), s. 128. The right of a creditor against an alienee or devisee of the heir would apparently be no greater than his right against the alienee or devisee of his debtor, see *Bishen Chand (Rai) v. Asmaida Koer (Mussumat)* (1883), 11 I. A. 164; 6 All. 560.

¹ *Dyamonee Debea v. Brindabun Chunder Banerjee*, Ben. S. D. A. 1856, p. 97; *Ponnappa Pillai v. Pappuvayangar* (1881), 4 Mad. 1, at pp. 9, 21, 45; *Keval Bhagvan Gujar v. Ganpati Narayan* (1883), 8 Bom. 220; *Girdharlal Krishnavallabh v. Shiv (Bai)* (1884), 8 Bom. 309; *Omuthoonnissa*

(*Mussamat*) v. *Puresmun Narain Singh* (1876), 25 W. R. C. R. 202; *Sakharam Ramchandra Dikshit v. Govind Vaman Dikshit* (1873), 10 Bom. H. C. 361; *Udaram Sitaram v. Ranu Panduji* (1875), 11 Bom. H. C. 76; *Lallu Bhagvan v. Tribhuvan Motiram* (1889), 13 Bom. 653. See *Dheraj Mahatab Chand Bahadoor (Maharajah) v. Huro Mohun Acharjee*, W. R. (1864), M. R. 1; *Jummal Ali v. Tirbhee Lall Dass* (1869), 12 W. R. C. R. 41; *Sangili Virapandia Chinnathambiar v. Alwar Ayyangar* (1881), 3 Mad. 42. Act VII. (Bo. C.) of 1866.

² This would not apply to a debt or a contract before partition entered into by the father as manager of the family. *Ramachandra Padayachi v. Kondayya Chetti* (1901), 24 Mad. 555.

³ *Krishnasami Konan v. Ramasami Ayyar* (1899), 22 Mad. 519.

⁴ See ante, p. 286.

received by him.¹ There is no obligation upon any other coparcener, who has acquired rights by survivorship to pay the debts of the deceased coparcener.²

Debts can be recovered from the person who has wrongfully come into possession of the property of the deceased debtor.³

This would not apply to lands held on a tenure, which rendered it not transferable or saleable in execution of a decree.⁴

¹ W. Macnaghten's "Hindu Law," ii. p. 284; Colebrooke's "Digest," vol. i. 270; "Vyavahara Mayukha," chap. v. s. 4, para. 17; "Dayabhaga," chap. i. para. 47; "Narada Smriti," chap. iii. para. 22; cf. Act V. of 1881, ss. 101-105.

² As to the sale of a share, see *Kotta Ramosami Chetti v. Bangari Seshama Nayanivaru* (1881), 3 Mad. 145, at p. 167. As to impartible property, see *Nachiappa Chettiar v. Chinnayasami Naicker* (1906), 29 Mad. 453; *Zamindar of Karvetnagar v. Trustee of Tirumalai* (1909), 32 Mad. 429; *Rajah of Kalahasti v. Achigadu* (1905), 30 Mad. 454.

³ See *Magaluri Garudiah v. Narayana Rungiah* (1881), 3 Mad. 359; *Kanakamma v. Venkataratnam* (1884), 7 Mad. 586; *Prosunno Chunder Bhattacharjee v. Kristo Chytunno Pal*

(1878), 4 Calc. 342; 3 C. L. R. 154; *Surbomungola Dabee v. Mohendronath Nath* (1874), 4 Calc. 508; *Khitish Chandra Acharjya Chowdhury v. Radhika Mohun Roy* (1907), 35 Calc. 276; 12 C. W. N. 237.

⁴ See *Nilmoni Singh (Rajah) v. Bakranath Singh* (1882), 9 I. A. 104; *Jaggivandas Javerdas v. Imdad Ali* (1882), 6 Bom. 211; *Muppidi Papaya v. Ramana* (1883), 7 Mad. 85; *Anundo Rai v. Kali Prosad Singh* (1884), 10 Calc. 677; S. C. on appeal, *Kali Pershad Singh (Tekant) v. Anund Roy* (1887), 15 I. A. 19; 15 Calc. 471; *Appaji Bapuji v. Keshav Shamrav* (1890), 15 Bom. 13. As to the liability of a person who intermeddles with the assets, see *Khitish Chandra Acharjya Chowdhry v. Radhika Mohan Roy* (1907), 35 Calc. 276; 12 C. W. N. 237.

CHAPTER IX.

PARTITION.

What is
partition.

PARTITION is the process by which the members of a joint family become separate, and cease to be coparceners.¹

Under the Mitakshara school separation may be effected either by a partition of the title, *i.e.* by an ascertainment of the shares of the coparceners, and by a separation of such shares in interest, the coparceners thereafter holding as tenants in common, or by a partition of the property by metes and bounds.

According to the Dayabhaga school it consists of a division of the property by metes and bounds between the coparceners in accordance with their shares.

WHO IS ENTITLED TO PARTITION. c

Who is en-
titled to
partition.

“The ordinary rule is that if persons are entitled beneficially to shares in an estate, they may have a partition.”²

Agreement not
to partition.

Except in Bombay³ an agreement for consideration⁴ not to partition coparcenary property binds the actual parties thereto,⁵ but it does not bind their representatives, or, unless there be an agreement not to assign, their assignees.⁶

¹ Cunningham's "Hindu Law," p. 136. As to the mode by which such separation is effected, see *post*, pp. 327 *et seq.*

² *Shankar Baksh v. Hardeo Baksh* (1888), 16 I. A. 71, at p. 75; 16 Calc. 397, at p. 405. See *Secretary of State v. Kamachee Boye Sahaba* (1859), 7 M. I. A. 476, at p. 537; 4 W. R. P. C. 42, at p. 45. This applies equally to widows, *Sellam v. Chinammal* (1901), 24 Mad. 441.

³ *Ramlinga Khanapure v. Virupakshi Khanapure* (1883), 7 Bom. 538.

⁴ *Srimohan Thakur v. Macgregor* (1901), 28 Calc. 769, at p. 786; *Radhanath Mookerjee v. Tarrucknath Mookerjee* (1875), 3 C. W. N. 126.

⁵ *Ramdhone Ghose v. Anund Chunder Ghose* (1865), 2 Hyde, 93; *Rajender Dutt v. Sham Chund Mitter* (1880), 6 Calc. 106; *Krishnendra Nath Sarkar v. Debendra Nath Sarkar* (1908), 12 C. W. N. 793, explaining *Srimohan Thakur v. Macgregor* (1901), 28 Calc. 769, at p. 786, and *Radhanath Mookerjee v. Tarrucknath Mookerjee* (1875), 3 C. W. N. 126. See *Subbaraya Tawker v. Rajaram Tawker* (1901), 25 Mad. 585.

⁶ *Anath Nath Dey v. Mackintosh* (1871), 8 B. L. R. 60; *Anand Chandra Ghose v. Pran Kisto Dutt* (1869), 3 B. L. R. O. C. 14; 11 W. R. O. C. 19; *Pirojshah v. Manibhai* (1911), 36 Bom. 53; 13 Bom. L. R. 963.

A direction in a will prohibiting partition has no effect, as it is a condition repugnant to the gift.¹ Similarly, the owner of property cannot by mere contract during his life prevent his heirs from partitioning property after his death.² Condition in will.

By custom or by the terms of a grant from Government property may be impartible.³

Except in the case of a suit by a minor,⁴ the Court has no discretion to refuse partition.⁵ Each coparcener is at liberty to elect to separate from the joint family, but he cannot force a separation among the others against their will.⁶

Under the Bengal school of law, every adult coparcener, male or female,⁷ is entitled to enforce partition of the coparcenary property. Bengal school.

Except that there can be no partition directly between grandfather and grandson while the father is alive,⁸ or between great-grandfather and great-grandson when the father or grandfather is alive, every adult coparcener is, under the Mitakshara school of law, entitled to enforce partition. Mitakshara school.

“According to the Mitakshara law, all the male descendants of the common ancestor have an interest in the property, and any of them may demand partition, unless excluded by some disability. The descendants of the common ancestor may live together for generations; and when partition is to take place, all that is necessary is to ascertain their mutual relationship.”⁹

“The property in the paternal or ancestral estate acquired by birth

¹ *Mokoondo Lall Shaw v. Gonesh Chunder Shaw* (1875), 1 Calc. 104; *Raikishori Dasi v. Debendranath Sircar* (1887), 15 I. A. 37; 15 Calc. 409. Act X. of 1865 (Succession), s. 125, applied to certain Hindu wills under the Hindu Wills Act (XXI. of 1870) by s. 2 of the latter Act.

² *Rajender Dutt v. Sham Chund Mitter* (1880), 6 Calc. 106.

³ See *Vinayak v. Gopal* (1903), 30 I. A. 77; 27 Bom. 353; 7 C. W. N. 409; 5 Bom. L. R. 408.

⁴ *Post*, pp. 313, 314.

⁵ *Sellam v. Chinnammal* (1901), 24 Mad. 441, at p. 443; *Lade v. Sadashiva* (1904), 6 Bom. L. R. 35.

⁶ *Manjanatha v. Narayana* (1882), 5 Mad. 362, at p. 367. As to the presumption of a general partition, see *ante*, p. 216.

⁷ *Durga Nath Pramanick v. Chintamani Dassi* (1903), 31 Calc. 214; 8

C. W. N. 11. As to the case of a childless widow, who is entitled to a very small share, see *post*, p. 313, note 6.

⁸ *Bishen Chand (Rai) v. Asmaida Koer (Mussumat)* (1884), 11 I. A. 164, at p. 179; 6 All. 560, at p. 574; “Mitakshara,” chap. i. sec. 5, para. 3. A different view was adopted in *Jogul Kishore v. Shib Sawai* (1883), 5 All. 430; see *Apaji Narhar Kulkarni v. Ramchandra Raji Kulkarni* (1891), 16 Bom. 29. Although the grandson may be unable to enforce partition he is a coparcener. Apparently if his interest be sold (see *ante*, pp. 286, 287), the purchaser could not enforce partition (see *post*, p. 316), and might have to run the risk of waiting until the death of the father before suing for partition.

⁹ Bhattacharya's “Hindu Law,” 2nd ed. p. 322.

under the Mitakshara law is . . . so connected with the right to a partition that it does not exist where there is no right to it." ¹

Right of son,
grandson, and
great-grand-
son.

Under the Mitakshara law,² a son³ is entitled to partition of the coparcenary estate, whether movable or immovable,⁴ as against his father.⁵ On his father's death, but not until then, he is entitled to partition as against his father's father.⁶ On the death of his father and his father's father he has a similar right against his father's father's father.⁷

On the death of his father he represents his father's right to claim partition against his father's father.⁸

Even when his father and grandfather are both alive, a suit for partition may be brought by a coparcener, if they allow the property to be wasted and his interest to be imperilled.⁹

Partition
between
women.

Where two or more women hold property jointly, as in the cases of widows or daughters succeeding as heirs, one of them is entitled to enforce a partition,¹⁰ but such partition does not

¹ *Sartaaj Kuari (Rani) v. Deoraj Kuari (Rani)* (1888), 15 I. A. 51, at p. 64; 10 All. 272, at p. 287.

² This question cannot arise under the Bengal school, *ante*, p. 217.

³ As to illegitimate sons, see *ante*, pp. 220, 221.

⁴ *Jugmohandas Mangaldas v. Mangaldas Nathubhoy (Sir)* (1886), 10 Bom. 528.

⁵ *Suraj Bansi Koer v. Sheo Proshud Singh* (1879), 6 I. A. 88, at p. 100; 5 Calc. 148, at p. 165; 4 C. L. R. 226, at p. 233; *Apaji Narhar Kulkarni v. Ramchandra Ranji Kulkarni* (1891), 16 Bom. 29, at pp. 32, 33; *Raja Ram Tewary v. Luchmun Persad* (1867), B. L. R. F. B. 731, at p. 738; 8 W. R. C. R. 15, at p. 20; *Laljeet Singh v. Rajcoomar Singh* (1873), 12 B. L. R. 373; 20 W. R. C. R. 336; *Subba Ayyar v. Ganasa Ayyar* (1895), 18 Mad. 179; *Kaliparshad v. Ramcharan* (1876), 1 All. 159; *Cassumbhoy Ahmedbhoy v. Ahmedbhoy Hubibhoy* (1887), 12 Bom. 280 (a case of Khoja Mahomedans). It was held by a majority of the full bench in *Apaji Narhar Kulkarni v. Ramchandra Ranji Kulkarni* (1891), 16 Bom. 29, that although a son can sue his father alone, a son cannot in the lifetime of his father

sue his father and uncles for partition (see also *Jivabhai v. Vadilal* (1905), 7 Bom. L. R. 232), but the Madras High Court has dissented from this view, *Subba Ayyar v. Ganasa Ayyar* (1895), 18 Mad. 179, see also Bhattacharya's "Hindu Law," 2nd ed., pp. 324, 225. It is submitted that the view of the dissenting Judge (Telang, J.) in the Bombay case was correct.

⁶ *Nagalinga Mudali v. Subbaramanaya Mudali* (1862), 1 Mad. H. C. 77.

⁷ This follows from the fact that the great grandson acquires a right by birth, *ante*, pp. 219, 220.

⁸ "Mitakshara," chap. i. sec. 5, para. 1.

⁹ *Rameshwar Prosad Singh v. Lachmi Prosad Singh* (1903), 31 Calc. 111.

¹⁰ *Sundar (Mussamat) v. Parbati (Alussanmat)* (1889), 16 I. A. 186; 12 All. 51, and cases, *post*, p. 313, note 1. *Ariyaputri v. Alamelu* (1888), 11 Mad. 304; *Durga Dat v. Gita* (1911), 33 All. 443; *Contrá Kathaperumal v. Venkabalai* (1880), 2 Mad. 194; *Sellam v. Chinnammal* (1901), 24 Mad. 441; *Jijoyiamba Bayi Sabiha* (H. H. M.) v. *Kamakshi Bayi Sahiba* (H. H. M.) (1868), 3 Mad. H. C. 424.

affect the right of survivorship of the co-widow or sister,¹ and must be effected in such a way as not to prejudice the rever- sionary heirs.²

This case frequently occurs under the Bengal school of law. Under the Mitakshara school it could only occur with regard to the separate acquisitions of the husband or father, or in the case where the husband or father died without leaving any coparcener him surviving, or perhaps in a case where a share is allotted to wives on a partition.³

Where a widow or daughter is entitled to a partition a purchaser of her share is also entitled to partition.⁴

Where a Hindu widow is entitled to partition, and there is a reasonable apprehension that she will waste the movable property allotted to her share, sufficient provision should be made in the final decree for partition, for the prevention of such waste, to safeguard the interests of the reversioners.⁵

It has been held that in a suit for partition by a widow the Court has a discretion.⁶

Where a coparcener is a minor, and his interests are likely to be prejudiced by the property remaining joint, as, for instance, where his coparceners are wasting the property, or setting up rights adverse to him, or decline to provide for his maintenance, or it be otherwise for his interest that there should be a partition, a suit ⁷ for a partition can be brought on his behalf,⁸ even against

Minor coparcener.

¹ *Nilamani Patta Maha Devi Garu (Sri Gajapathi) v. Radhamani Patta Maha Devi Garu (Sri Gajapathi)* (1877), 4 I. A. 212; 1 Mad. 290; 1 C. L. R. 97; *Dal Koer (Musst.) v. Panbas Koer (Musst.)* (1904), 8 C. W. N. 658; *Rindamma v. Venkataramappa* (1866), 3 Mad. H. C. 268; *Padma-dasi Dasi (Srimati) v. Jagadambg Dasi (Srimati)* (1871), 6 B. L. R. 134; *Hari Narayan Jog v. Vitai* (1907), 31 Bom. 580; 9 Bom. L. R. 1049.

² *Dal Koer (Musst.) v. Panbas Koer (Musst.)* (1904), 8 C. W. N. 658; *Janokinath Mukhopadhyaya v. Mothuranath Mukhopadhyaya* (1883), 9 Calc. 580; 12 C. L. R. 215.

³ *Post*, pp. 316, 317.

⁴ *Janokinath Mukhopadhyaya v. Mothuranath Mukhopadhyaya* (1883), 9 Calc. 580; 12 C. L. R. 215.

⁵ *Durga Nath Pramanik v. Chintamani Dassi* (1903), 31 Calc. 214; 8 C. W. N. 11. See *Janokinath Mukho-*

padhyaya v. Mothuranath Mukhopadhyaya (1883), 9 Calc. 580; 12 C. L. R. 215.

⁶ *Mohadeay Kooer v. Haruknarain* (1882), 9 Calc. 244, at p. 250. It was said in *Soudaminey Dossee v. Jogesh Chunder Dutt* (1877), 2 Calc. 262, at p. 271, that the Court would probably refuse partition by metes and bounds to a childless widow who was entitled to a very small share.

⁷ I.e. either a suit in a Civil Court, or a proceeding in a Revenue Court.

⁸ *Damoodur Misser v. Senabuttu Misrain* (1882), 8 Calc. 537; 10 C. L. R. 402; *Mahadev Balvant v. Lakshman Balvant* (1894), 19 Bom. 99; *Thangam Pillai v. Suppa Pillai* (1888), 12 Mad. 401; *Kamakshi Ammal v. Chidambura Reddi* (1866), 3 Mad. H. C. 94; *Alimelammal v. Aranachellam Pillai* (1866), 3 Mad. H. C. 69; *Lekhraj Kooer (Mussamut) v. Dyal Singh (Sirdar)* (1876), 25 W. R. C. R. 497.

his father.¹ If there be no such special circumstances, such suit cannot be instituted on his behalf.²

The same principle would apply to reviving on behalf of a minor a suit for partition instituted by his father,³ provided it be clear that the omission to continue the suit does not prejudice the minor's rights to the property.

It is not ordinarily in the interests of a minor member of a joint Hindu family, or of any other minor joint-owner, that his share should be separated. *Prima facie*, a partition is not for a minor's benefit, because, ordinarily speaking, the family estate is better managed, and yields a greater ratio of profit in union than when split up and distributed among the several parceners, and moreover, by partition, a minor member of a Mitakshara family would lose the benefit of survivorship.⁴ There is also the danger of the minor's property being wasted by the costs of litigation.

Such special circumstances, as would render a suit for partition necessary in the interest of the minor, would justify a guardian in arranging a partition,⁵ or submitting it to arbitration.⁶

Where an adult co-sharer insists upon partition the guardian cannot resist it, but must do his best in the interests of the minor.⁷

A partition by arbitration,⁸ or by arrangement,⁹ or by the Collector,¹⁰ is binding on a minor, and can be enforced by him,¹¹ provided that he be not injuriously affected thereby, that it be fair, that he be duly represented,¹² and that the person

¹ *Bholanath v. Ghani Ram* (1907), 29 All. 373.

² *Damoodur Musser v. Senabutty Musraim* (1882), 8 Calc. 537; 10 C. L. R. 401; *Almelammal v. Arunachellam Pillai* (1866), 3 Mad. H. C. 69; *Svamiyar Pillai v. Chokkaln-gam Pillai* (1862), 1 Mad. H. C. 105. If the suit be not for the benefit of the minor, the Court will refuse to decree partition. *Bachoo Hurkisson-das v. Mankorebai* (1907), 34 I. A. 107; 31 Bom. 373; 11 C. W. N. 769; 9 Bom. L. R. 646.

³ *Parvathi v. Manjayakarantha* (1870), 5 Mad. H. C. 193.

⁴ *Kamakshi Ammal v. Chidambara Reddi* (1861), 3 Mad. H. C. Rep. 94; Macnaghten's "Hindu Law," vol. II. chap. I. s. 1, case 10; Mayne's "Hindu Law," 7th ed., pp. 642, 643.

⁵ *Ante*, p. 313. See *Parbat (Musammal) v. Naunihal Singh (Chaudhri)*

(1909), 36 L. A. 71; 31 All. 412; 13 C. W. N. 983; 11 Bom. L. R. 878 West and Buhler, 2nd ed., p. 303.

⁶ *Jagan Nath v. Mannu Lal* (1894), 16 All. 231.

⁷ See *Nallappa Reddi v. Balammal* (1864), 2 Mad. H. C. 182.

⁸ *Ramnarayan Poramanick v. Sreemutty Dossee* (1864), 1 W. R. C. R. 281.

⁹ *Deo Bunsee Koor (Musamul) v. Dwarkanath* (1868), 10 W. R. C. R. 273; S. C., *Deowanti v. Dwarkanath*, 8 B. L. R. 363, note.

¹⁰ *Hari Prasad Jha (Baboo) v. Muddan Mohan Thakur* (1872), 8 B. L. R., Ap. 72; 17 W. R. C. R. 217.

¹¹ *Awadh Sarju Prasad Singh v. Sita Ram Singh* (1906), 29 All. 37.

¹² *Lal Bahadur Singh v. Sisupal Singh* (1892), 14 All. 498; *Krishnabai v. Khangowda* (1893), 18 Bom. 197.

representing him in such proceedings act *bond fide* and with a due regard to his interest.¹

"There is no doubt that a valid agreement for partition may be made during the minority of one or more of the coparceners. That seems to follow from the admitted right of one coparcener to claim a partition, and if an agreement for partition could not be made binding on minors, a partition could hardly ever take place. No doubt, if the partition were unfair or prejudicial to the minor's interests, he might, on attaining his majority, by proper proceedings set it aside so far as regards himself."²

When a son is born to the father of a Mitakshara family, after there has been a partition between him and his sons, the afterborn son is not entitled to a redistribution,³ unless he was conceived at the time of the partition,⁴ but he is to the exclusion of his separated brethren entitled as a coparcener to the share allotted to his father, and to succeed as heir to his father.⁵

It has been held that where the father has reserved no share for himself on the partition, an afterborn son is entitled to a share.⁶

In a case governed by the Bengal school, a posthumous son would be entitled to reopen a partition made by his brothers after his father's death and before his birth.⁷

As to the effect of a partition on the rights of coparceners who are absent, Sir Thomas Strange⁸ says as follows: "Upon

Effect of birth of son after partition.

Absent coparceners.

¹ *Kalee Sunkur Sannyal v. Denendro Nath Sannyal* (1874), 23 W. R. C. R. 68; *Chanvirapa v. Danava* (1894), 19 Bom. 593; *Nallapa Reddi v. Balammal* (1864), 2 Mad. H. C. 182. As to cases governed by Malabar law, see *Arayalprath Kunhi Pocken v. Kanthilath Ahmad Kutu* (1905), 20 Mad. 62.

² *Balkishen Das v. Ram Narain Sahu* (1903), 30 I. A. 139, at p. 150; 30 Cal. 738, at p. 752; 7 C. W. N. 578, at p. 580; 5 Bom. L. R. 461. As to the limitation for such suits, see *Lal Bahadur Singh v. Sisupal Singh* (1892), 14 All. 496; *Krishnabai v. Khangowda* (1893), 18 Bom. 197; *Chanvirapa v. Danava* (1894), 19 Bom. 593.

³ *Yekeyamian v. Agniawarian* (1869), 4 Mad. H. C. 307; *Shivajirao v. Vasantrao* (1908), 33 Bom. 267; 10

Bom. L. R. 778; *Gunpat v. Gopalrao* (1898), 1 Bom. L. R. 123.

⁴ *Minakshi v. Virappa* (1884), 8 Mad. 89.

⁵ See *Naval Singh v. Bhagwan Singh* (1882), 4 All. 427; *Gunpat v. Gopalrao* (1898), 1 Bom. L. R. 123. Where one son has separated, the afterborn son is entitled to share with the father and the united sons, but has no right to a share of the property allotted to the separated son, *Gunpat Venkatesh Despande v. Gopalrao Venkatesh Despande* (1899), 23 Bom. 636.

⁶ See *Chengama Nayudu v. Munisami Nayudu* (1896), 20 Mad. 75; W. Macnaghten's "Hindu Law," vol. 1 p. 47.

⁷ "Dayabhaga," chap. vii. para. 10.

⁸ "Hindu Law," vol. I. pp. 206, 207.

the same footing, in this respect, with minors are *absentees*, residing in a foreign country,¹ whose consent, at the time, not being attainable, partition may proceed without it, the law enjoining the preservation of their respective shares, till the one arrive at majority, and the other returns; and this is the case of the latter to the extent of the *seventh* in descent, the right of parceners remaining at home, being lost by dispossession beyond the *fourth*.''²

This would, of course, be subject to the law for the limitation of suits.³

Purchaser
of share.

The purchaser of the share of a coparcener, either at an execution sale⁴ or by a voluntary transfer, where such transfer is valid,⁵ has the same right of partition as the coparcener whose share was purchased by him, and is entitled to have a separate portion allotted to him,⁶ but he may be compelled to sell to a coparcener a share of a dwelling-house purchased by him.⁷

As to a suit by a transferee for partition, see *post*, p. 338.

RIGHTS OF WIFE AND WIDOW. •

Rights of wife
on partition.

Under the Mitakshara school of law, except in Southern India, on a partition of coparcenary property by a father and his son or sons (or purchasers of their shares⁸), the wife of the

¹ The rules as to what is a foreign country (Colebrooke's "Digest," vol. ii. p. 29), such as difference of language, the intervention of a mountain or great river, countries being accounted distant whence intelligence is not received in ten nights, would probably be disregarded in view of modern means of communication.

² "Dayabhaga," chap. viii.; Colebrooke's "Digest," vol. iii. pp. 440, 448; "Daya-Krama Sangraha," chap. ix.; Strangé's "Hindu Law," vol. ii. pp. 327, 390.

³ See Act IX. of 1908, Sched. I., Arts. 127, 144.

⁴ *Ante*, pp. 286, 287.

⁵ *Ante*, pp. 287, 288.

⁶ *Bepin Behari Moduck v. Lall Mohun Chattopadhyaya* (1885), 12 Calc. 209; *Janaki Nath Mukhopadhyaya v.*

Mothuranath Mukhopadhyaya (1883), 9 Calc. 580; 12 C. L. R. 215 (a suit by a purchaser from one of two widows); *Alamelu v. Rangasami* (1884), 7 Mad. 588; *Pandurang Anandray v. Bhaskar Shadashv* (1874), 11 Bom. H. C. 72; *Lall Jha (Baboo) v. Juma Buksh (Shakh)* (1874), 22 W. R. C. R. 116; *Lochun Singh v. Nemdharee Singh* (1873), 20 W. R. C. R. 170; *Bughoonath Panjah v. Luckhun Chunder Dullal Chowdhry* (1872), 18 W. R. C. R. 23; *Anand Chandra Ghose v. Prankisto Dutt* (1869), 3 B. L. R. O. C. 14. As to his share on partition, see *ante*, p. 288.

⁷ Act IV. of 1893, s. 4, *post*, p. 341.

⁸ *Sumgun Thakoor v. Chundermun Misser* (1881), 8 Calc. 17; 9 C. L. R. 415.

father is entitled to have allotted to her for her separate enjoyment a share equal to a son's share,¹ in order to provide for her maintenance.²

Mr. Mayne³ states that in Southern India the practice of allotting shares to wives is obsolete. Having regard to old authorities of the Dravid school it was not settled whether the father retained for them the shares which are assigned to his wives, or whether, as in the case of the Benares, Bombay, and Mithila schools, the shares should be made over to the wives themselves.⁴

As under the law of the Bengal school a father is entitled to the absolute disposal of his property, whether ancestral or self-acquired,⁵ this question cannot arise. In the rare case of a father partitioning his property amongst his sons, it is said that "his sonless wives are each entitled to a share equal to that of a son, or to half⁶ of such share, according as they are unprovided, or provided, with *stridhana*."⁷

If the wife has previously had separate property given to her by her husband or father-in-law, she takes so much as with such separate property would amount to a share equal to that of one of the sons.⁸

¹ *Damoodur Misser v. Senabuttu Misra* (1882), 8 Calc. 537; 10 C. L. R. 401; *Dular Koeri v. Dwarkanath Misser* (1904), 32 Calc. 234; 9 C. W. N. 270; *Sumrun Thakoor v. Chundermun Misser* (1881), 8 Calc. 17; 9 C. L. R. 415; *Mahabeer Persad v. Ramyad Singh* (1873), 12 B. L. R. 90, at p. 99; 20 W. R. C. R. 192, at p. 196; *Laljeet Singh v. Rajcoomar Singh* (1873), 12 B. L. R. 373; 20 W. R. C. R. 337; *Purnod Narain Singh v. Hunooman Sahay* (1880), 5 Calc. 845, at p. 854; 5 C. L. R. 576, at p. 585. In each of the above cases the partition was at the instance of a son, but it is submitted that the same principle would apply when the partition was at the instance of the father, see "Mitakshara," chap. i. s. 7, paras. 1, 2. See "Vyavahara Mayukha," chap. iv., paras. 4, 5, 11; "Smriti Chandrika," chap. ii. s. 1, para. 39; "Vivada Chintamani" (P. C. Tagore's translation), pp. 230, 231; Colebrooke's "Digest," vol. iii. p. 12. This includes a stepmother of the sons. Macnaghten's "Hindu Law," vol. i. p. 60.

² *Laljeet Singh v. Rajcoomar Singh*

(1873), 12 B. L. R. 363, at p. 383; 20 W. R. C. R. 337, at p. 340; *Jairam Nathu v. Nathu Shamji* (1906), 31 Bom. 54; 8 Bom. L. R. 632. Strange's "Hindu Law," vol. i. p. 189. Banerjee's "Law of Marriage," 2nd ed., p. 141. See, however, *Dular Koeri v. Dwarkanath Misser* (1904), 32 Calc. 234, at p. 242; 9 C. W. N. 270, at p. 276.

³ Mayne's "Hindu Law," 7th ed., p. 645; *Meenatchee v. Chedumbra Chetty*, Mad. dec. of 1853, 61.

⁴ See "Smriti Chandrika," chap. ii. s. 1, 39; "Parasara Madhavaya-Dayavibhaga" (Burnell's translation), p. 8; Strange's "Hindu Law," vol. i. p. 189.

⁵ *Ante*, p. 218.

⁶ See, however, Colebrooke's "Digest," vol. iii. pp. 20-25.

⁷ Banerjee's "Law of Marriage," 2nd ed., pp. 140, 141, 142; "Dayavibhaga," chap. iii. ss. 2, paras. 31, 32; "Daya-Krama Sangraha," chap. vi. paras. 22-28; "Dayatattwa," chap. ii. paras. 13-18.

⁸ "Mitakshara," chap. ii. s. 11, para. 5. *Jairam Nathu v. Nathu Shamji* (1906), 31 Bom. 54; 8 Bom.

Mother's share
on partition.

Except in Southern India, where, it is said, the practice is obsolete,¹ a widow is, on a partition of coparcenary property² (but not on a mere severance of interest³) between her sons, or between her sons and grandsons⁴ (or purchasers of their shares),⁵ entitled to a share equal to that of one of her sons in lieu of maintenance.⁶

In Madras a mother is, according to the "Smṛiti Chandrika," entitled on partition between her sons to have allotted to her a portion sufficient for her maintenance, but not exceeding the share of one of her sons.⁷

Except under the Bengal school,⁸ a sonless widow is entitled to a share on a partition between her stepsons.⁹ Under the

L. R. 632. See *Mahabeer Persad v. Ramyad Singh* (1873), 12 B. L. R. 90, at p. 99; 20 W. R. C. R. 192, at p. 196.

¹ Mayne's "Hindu Law," 7th ed., pp. 645, 646, 837.

² She is not entitled to such right in property which has been acquired by the sons without any aid from the estate of their ancestors.

³ *Beti Kunwar v. Janki Kunwar* (1910), 33 All. 118.

⁴ *Badri Roy v. Bhugwat Narain Dobe* (1882), 8 Calc. 649; 11 C. L. R. 186; *Purna Chandra Chakravarti v. Sarojini Debi* (1904), 31 Calc. 1065; 8 C. W. N. 763; *Sibboosondery Dabia v. Bussosomutty Dabia* (1881), 7 Calc. 191; *Prawnkissen Mitter v. Muttysonder* (1841), Fulton, 389; *contra Radha Kishen Man v. Bachhaman* (1880), 3 All. 118.

⁵ *Amrita Lall Mitter v. Manick Lall Mullick* (1900), 27 Calc. 551; 4 C. W. N. 764; *Jogendra Chunder Ghose v. Fulkumari Dassi* (1899), 27 Calc. 77; 4 C. W. N. 254.

⁶ *Ganesh Dutt Thakoor (Chowdhry) v. Jewach Thakoorain (Mussummat)* (1903), 31 I. A. 10, at p. 15; 31 Calc. 262, at p. 271; 8 C. W. N. 146, at p. 150; 6 Bom. L. R. 1; *Hemangini Dasi (Srimati) v. Kedarnath Kudu Chowdhry* (1889), 16 I. A. 115; 16 Calc. 758; *Torit Bhoosun Bonnerjee v. Taraprosunno Bonnerjee* (1879), 4 Calc. 756; *Pursid Narain Sing v. Hunooman Sahay* (1880), 5 Calc. 845; 5 C. L. R. 576; *Kishori Mokun Ghose*

v. Monimokun Ghose (1885), 12 Calc. 165; *Isree Pershad Singh v. Nasib Kooer* (1884), 10 Calc. 1017; *Bilaso v. Dina Nath* (1880), 3 All. 88; *Jodoonath Dey Sircar v. Brojonath Dey* (1874), 12 B. L. R. 385; *Jugomohan Haldar v. Sarodamoyee Dossee* (1877), 3 Calc. 149; *Damodardas Maneklal v. Uttamram Maneklal* (1892), 17 Bom. 271; *Lakshman Ramchandra Joshi v. Satayabhamabai* (1887), 2 Bom. 494, at p. 504; *Sheo Dyal Tewaree v. Judoonath Tewaree* (1868), 9 W. R. C. R. 61. In *Thukoo Bae Bhide v. Ruma Bae Bhide* (1824), 2 Borr. 446, at p. 454, the pundits declared that the mother had a right to a share, although there was only one son. See also cases in West and Bühler, 2nd ed., pp. 391, 392.

⁷ Chap. iv. paras. 12-17. This is in accordance with the practice in Madras, Mayne's "Hindu Law," 7th ed., p. 646. *Mari v. Chinnammal* (1884), 8 Mad. 107, at p. 123; *Venkattammal v. Andiyappa Chetti* (1882), 6 Mad. 130; *Strange's "Hindu Law,"* vol. ii. p. 309. See Macnaghten's "Hindu Law," vol. i. p. 50.

⁸ *Damoodur Misser v. Senabuttu Misrain* (1882), 8 Calc. 537, at p. 542; 10 C. L. R. 401, at p. 405.

⁹ *Damoodur Misser v. Senabuttu Misrain* (1882), 8 Calc. 537; 10 C. L. R. 401 (a Mithila case); *Laljeet Singh v. Rajcoomar Singh* (1873), 12 B. L. R. 373; 20 W. R. C. R. 337; *Thakur Proshad (Chowdhry) v. Bhagbati*, 1 C. L. J. 142.

Bengal school when a partition is made between sons of different mothers, each mother is entitled to a share equal to that of each of her sons.¹

In a partition between sons by different wives the respective mothers are only entitled to share equally with their own sons the aggregate of the shares which an equal division among the brothers allots to those sons, or, in other words, the property must be first divided into as many shares as there are sons. Each widow then shares equally with each of her sons the portion allotted to her sons.²

In a Bombay case³ where there was a partition between a son and his stepmother and her three sons, the stepmother was given one-fifth. According to the above rule, she would have been entitled to a three-sixteenth share.

This right of the mother has been held only to apply to the case of a general partition, and not to a case where there has been only a partition of an item of the property at the instance of a stranger.⁴

It has also been held that this right only comes into operation when the partition is completed.⁵

Under the Bengal law a husband can by will, either expressly⁶ or by a bequest to other persons,⁷ deprive his wife of a share on partition.

On a partition between her son's sons, a widow is entitled to a share equal to that of a son's son.⁸ Right of grandmother.

¹ *Hemangini Dasi (Srimati) v. Kedar Nath Kudu Chowdhry* (1889), 10 L. A. 115; 16 Calc. 758. See *Toril Bhosun Bonnerjee v. Taraprosomo Bonnerjee* (1879), 4 Calc. 756.

² *Kristobhabinay Dossee v. Ashutosh Bosu Mullick* (1886), 13 Calc. 39; *Cally Churn Mullick v. Janova Dossee* (1866), 1 Ind. Jur. 284.

³ *Damodar Das Maneklal v. Uttamram Maneklal* (1892), 17 Bom. 271.

⁴ *Barahi Debi v. Debkamini Debi* (1892), 20 Calc. 682.

⁵ *Sheo Dyal Tewaree v. Judoonath Tewaree* (1868), 9 W. R. 61; explained in *Tej Pratap Singh v. Champa Kalee Koer* (1885), 12 Calc. 96.

⁶ *Debendra Coomar Roy Chowdhry v. Brojendra Coomar Roy Chowdhry* (1890), 17 Calc. 886, following *Bhoobunmoyee Deba Chowdhrai v. Ramkissore Achary Chowdhry*, Ben. S. D. A. 1860, p. 485.

⁷ *Poorendra Nath Sen v. Hemangini*

Dasi (1908), 36 Calc. 75; 12 C. W. N. 1002. As to her right of maintenance in such case, see *ante*, pp. 74, 75.

⁸ *Sorolah Dossee v. Bhoobun Mohun Neoghy* (1888), 15 Calc. 292, at p. 306; *Sheo Dyal Tewaree v. Judoonath Tewaree* (1868), 9 W. R. C. R. 61; "Dayabhaga," chap. iii. s. 2, para. 32; "Daya-Krama-Sangraha," chap. vii., paras. 4, 6; "Dayatattwa," chap. ii. para. 19; F. Macnaghten, 39, 41, 52, 54; Sircar's "Vyavastha Darpana," 2nd ed. pp. 493-498. *Contrá Puddum Mookhee Dossee v. Rayee Monee Dossee* (1869), 12 W. R. C. R. 409; S. C. on review *Rayee Monee Dossee v. Puddum Mookhee Dossee* (1870), 13 W. R. C. R. 66, which was a case on the same footing as a partition between sons. See *Purna Chandra Chakravarti v. Surojini Debi* (1904), 31 Calc. 1065, at p. 1076; 8 C. W. N. 763, at p. 771.

On a partition between son's sons and great-grandsons, she is entitled to the share of a son's son.¹

When the partition is between grandsons by different sons, the share of the grandmother is to be ascertained by giving her such a share as she would take if each of the grandsons took equally. Thus if there be nine grandsons she will get one-tenth, and so on. The share which the grandsons themselves take depends upon the number in each stock, and upon whether their own mothers are alive.

Great-grand-
mother.

The right of a widow to a share on a partition between her great-grandsons is not expressly recognized by the Hindu law.² The right would, it is submitted, be admissible upon grounds similar to those which confer a right upon a mother and grandmother.³

Gift by
husband.

In fixing the amount of her share, the widow must be debited with the value of any gift or legacy which she may have received from her husband.⁴

Apparently, as in the case of allotting maintenance, her separate property must be taken into account,⁵ but the fact that she has inherited a share from one of her sons does not deprive her of her right to a share on partition.⁶

In the absence of an express arrangement, a wife or widow has only a restricted interest in the property allotted to her on such partition, whether she be governed by the Bengal⁷ or by the Mitakshara school.⁸ It does not pass to her *stridhan* heirs,⁹ and she cannot dispose of it by will.¹⁰

¹ *Purna Chandra Chakravarti v. Sarojini Debi* (1904), 31 Calc. 1065; 8 C. W. N. 763. F. Macnaghten, 52.

² Colebrooke's "Digest," vol. iii. p. 27. F. Macnaghten, pp. 28, 51; doubted by Wilson, Works, v. 25.

³ See Sircar's "Vyavastha Darpana," 2nd ed., pp. 497, 498.

⁴ *Kishori Mohun Ghose v. Monimohun Ghose* (1885), 12 Calc. 165; *Judoonath Dey Sircar v. Brojonath Dey Sircar* (1874), 12 B. L. R. 385. "Mitakshara," chap. i. s. 2, para. 9; "Vyavahara Mayukha," chap. iv. s. 4, para. 18.

⁵ *Ante*, p. 82. See "Vyavahara Mayukha," chap. iv. s. 4, para. 18.

⁶ *Jugomohan Haldar v. Sarodamoyee Dassee* (1877), 3 Calc. 149; *Poorendra Nath Sen v. Hemangini*

Dasi (1908), 36 Calc. 75; 12 C. W. N. 1002.

⁷ *Sorolah Dassee v. Bhoobun Mohun Neoghy* (1888), 15 Calc. 292; *Hriday Kant Bhattacharjee v. Behari Lal Mookerjee* (1906), 11 C. W. N. 239; *Tripura Sundari Debi v. Dakshina Mohun Roy* (1906), 11 C. W. N. 698.

⁸ *Debi Mangal Prasad Singh v. Mahadeo Prasad Singh* (1912), 16 C. W. N. 409; 14 Bom. L. R. 220, reversing *Debi Mangal Prasad Singh v. Mahadeo Prasad Singh* (1909), 32 All. 253; *Chiddu v. Naubat* (1901), 24 All. 67; *Sri Pal Rai v. Surajbali* (1901), 24 All. 82.

⁹ *Cases ante*. Notes 7, 8.

¹⁰ *Hriday Kant Bhattacharjee v. Behari Lal Mookerjee* (1906), 11 C. W. N. 89.

On her death it goes back, it is submitted, to the sons and grandsons from whose share it was deducted.¹ This question was not decided in *Debi Mangal Prasad Singh v. Mahadeo Prasad Singh*.² It depends upon whether the property is given to the woman in lieu of inheritance or in lieu of maintenance.³ It was suggested in *Dinesh Chandra Roy Chowdhury v. Biraj Kaminey Daser* (1911), 39 Calc. 87, at p. 100; 15 C. W. N. 945, at p. 952, that the right arises from a proprietary right.

Although a right to maintenance is not a complete charge upon the property,⁴ a right to a share in lieu of maintenance is not affected by a sale of an undivided share, whether before⁵ or during the pendency of a partition suit.⁶

It has been held that the loss of a right of maintenance would involve the loss of the right to a share on partition.⁷

It is, it is submitted, clear that when the share had been allotted, want of chastity would not divest the right.⁸

A wife or widow cannot, until there has been a partition or separation, enforce her right to a share,⁹ even if by arrangement a share of the profits has been assigned to her for her maintenance,¹⁰ and until partition she has no alienable interest.¹¹ When there has been a partition, or a separation, she may sue for her share.¹² She is a necessary party to a suit by a son against her husband,¹³ or to a suit between her sons, for partition; but the omission to reserve a share for the mother does not render the partition invalid.¹⁴ She may acquiesce in such omission.¹⁵

¹ See cases *ante*, p. 320, notes 7, 8.

² P. C. (1912), 16 C. W. N. 409; 14 Bom. L. R. 220. Their Lordships there said that it went back "to the estate from which it was taken."

³ *Ibid*.

⁴ *Ante*, p. 85.

⁵ *Bilaso v. Dinanath* (1880), 3 All. 88; *Amrita Lal Mitter v. Manick Lal Mullick* (1900), 27 Calc. 551; 4 C. W. N. 784. See *Deendyal Lal v. Jugdeep Narain Singh* (1877), 4 I. A. 247, at p. 256; 3 Calc. 198, at p. 209.

⁶ *Jogendra Chunder Ghose v. Ful-kumari Dassi* (1899), 27 Calc. 77; S. C. *sub nomine Jogendro Chunder Ghose v. Ganendra Nath Sircar*, 4 C. W. N. 254; *ante*, p. 89.

⁷ *Sellam v. Chinnamal* (1901), 24 Mad. 441. See *ante*, p. 78.

⁸ See *Moniram Kolita v. Kerry Kolitany* (1880), 7 I. A. 115; 5 Calc.

776; 6 C. L. R. 322.

⁹ *Sunder Bahu v. Monohur Lal Upadhyaya* (1881), 10 C. L. R. 79, at p. 80; Strange's "Hindu Law," vol. i. pp. 188, 189; Colebrooke's "Digest," vol. iii. pp. 27, 422-427.

¹⁰ *Bhoop Singh v. Phool Kower (Mussumat)* (1867), 2 Agra, 368.

¹¹ *Judoonath Tewaree v. Bishonath Tewaree* (1868), 9 W. R. C. R. 61.

¹² *Ram Joshi v. Laxmibai* (1864), 1 Bom. H. C. 189, and cases *ante*, p. 318, note 6.

¹³ *Laljeet Singh v. Rajcoomar Singh* (1873), 12 B. L. R. 373, at p. 383; 20 W. R. C. R. 336, at p. 340.

¹⁴ *Ganesh Dutt Thakoor (Chowdhry) v. Jewach Thakoerain (Mussumat)* (1903), 31 I. A. 10, at p. 15; 31 Calc. 262, at p. 271; 8 C. W. N. 146, at p. 160; 6 Bom. L. R. 1.

¹⁵ *Ibid*.

No other right
on partition.

A woman, who is not a coparcener, is not entitled to a share except on such partition as is above mentioned.¹

Sister.

Although some of the ancient writers gave her the right to a one-fourth share,² a sister is not entitled to a share on a partition.³ As she is entitled to her maintenance until marriage, and to her marriage expenses out of the family property,⁴ provision therefor should be made at the time of the partition.

ALLOTMENT OF SHARES.

"To effect a partition in a case governed by the Dayabhaga it is necessary to know the dates of birth and death of predeceased members. But in a Mitakshara family the surviving members remain in possession of the whole property, as if the predeceased members never existed."⁵

Shares on
partition.

On a partition shares are allotted in accordance with the following rules.

There is nothing in law to prevent an arrangement upon a different footing,⁶ so far as the interests of adult coparceners are concerned, but an arrangement between the parties to a partition that the shares should be inalienable, and should revert to the original coparceners, cannot be upheld.⁷

Between
father and
sons.

Under the Mitakshara school of law, in a partition between a father and his sons, each of the sons takes a share equal to that of the father.⁸

Unequal
division by
father.

Although under the Mitakshara a father is entitled to dispose of his self-acquired property,⁹ and under the Bengal school he is entitled to dispose of all his property, whether ancestral or self-acquired, it does not seem settled upon the

¹ *Sheo Dyal Tewaree v. Judoonath Tewaree* (1868), 9 W. R. C. R. 61.

² "Manu," chap. ix. para. 118; "Mitakshara," chap. i. s. 7, paras. 5-10; "Dayabhaga," chap. iii. s. 2, paras. 38, 39; "Smṛti Chandrika," chap. iv. paras. 32-34; "Vivada Chintamani" (Tagore's translation). p. 248; Colebrooke's "Digest," vol. iii. pp. 93, 94.

³ See *Damoodur Misser v. Senabuttu Mraam* (1862), 8 Calc. 537, at p. 541; 10 C. L. R. 401, at p. 404; W. Macnaghten's "Hindu Law," vol. i. p. 50.

⁴ *Ante*, pp. 48, 49, 227, 260.

⁵ Bhattacharya's "Hindu Law," 2nd ed., p. 322.

⁶ See *Ram Nirunjun Singh v. Prayag Singh* (1881), 8 Calc. 138; 10 C. L. R. 66; *Kanti Chandra Mukerji v. Ali-v-Nabi* (1911), 33 All. 414.

⁷ *K. Venkatrammanna v. K. Brammanna Sastrulu* (1869), 4 Mad. H. C. 345. As to an agreement not to partition, see *ante*, p. 310.

⁸ "Mitakshara," chap. i. s. 5, para. 5. *Ante*, p. 219.

⁹ *Ante*, p. 238.

authorities whether in the former case he can divide his self-acquired property, or in the latter case any of his property, in unequal shares between his sons.¹

Some of the text writers² prohibited such inequality of division, except under special circumstances.

Mr. Mayne³ sums up the authorities in the following words: "The result would be that a father under Mitakshara law, in dealing with his self-acquired property, or any other property in which his sons take no interest by birth, and a father under Bengal law, in dealing with any property, may distribute it as he likes. If he conforms to the rules of partition, the transaction will be valid by mutual agreement, without actual apportionment followed by possession; but if he does not conform to those rules, then he must deliver the share to each of the sharers, so as to make a valid gift to each."

As to the Bengal school, Dr. Jogendra Nath Bhattacharya,⁴ said: "As the father can undoubtedly make a gift of ancestral property, even in favour of a stranger, there can be no doubt that the father can make an unequal partition of such property among his sons, though by doing so against the rules of the Shastras he incurs sin;" and R. C. Mitra⁵ says: "It has been held that the injunctions against an unequal distribution by the father are mere moral precepts which no Court of law would enforce. A father bent upon making an unequal distribution may do so in more ways than one."

As a general rule at a partition, each member of the family is presumed to represent not only himself but also his sons, and the sons take their share through their father, as being included in the share allotted them.⁶

Father represents his sons.

It is open to the son to contest the partition on ground of fraud, or that the share allotted did not properly represent the share to which the father's heir was entitled.⁷

According to all the schools, on a partition brothers take equal shares.⁸

Between brothers, or their sons, etc.

¹ *Ante*, pp. 217, 218.

² Colebrooke's "Digest," vol. ii. pp. 540, 541; "Vyavahara Nirṇaya," Burnell's translation, p. 8; "Daya-bhaga," chap. ii. paras. 15-20, 50, 86; Strange's "Hindu Law," vol. i. p. 194; Macnaghten's "Hindu Law," vol. ii. p. 147. "The Daya-bhaga" makes a distinction between ancestral and self-acquired property, so does the "Daya-Krama Sangraha" (chap. vi. paras. 8-16). The "Mitakshara" seems to allow an

unequal partition, chap. i. s. 2, paras. 6, 13, 14. See also "Smṛiti Chandrika," chap. ii. s. i., paras. 17 to 24.

³ 7th ed., p. 665.

⁴ "Hindu Law," 2nd ed., p. 361.

⁵ "Law of Joint Property and Partition," p. 320.

⁶ *Umed v. Khalsabai* (1909), 11 Bom. L. R. 396.

⁷ *Ibid.*

⁸ *Lakshman Dada Naik v. Ram-chandra Dada Naik* (1876), 1 Bom.

Shares of
deceased
brothers.

Under the Mitakshara school, the share of a brother who has died is represented by his sons, grandsons, and great-grandsons.¹

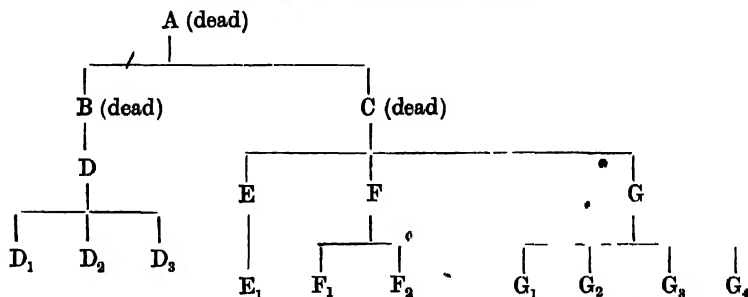
Under the Bengal school, the share of a brother, who is dead, is taken by his heir,² devisee, or assignee.

Different
branches.

As between different branches of a family, division must be *per stirpes*, i.e. according to the stocks,³ and as between the sons of the same father, it must be *per capita*,⁴ i.e. according to the number of sons.

This rule "is designed to ensure equality of partition in cases of vested interests held in coparcenary, and to carry out in those cases the principles that those who have capacity to confer equal spiritual benefits on the common ancestor ought to take equal shares."⁵

Illustration. (Mitakshara School.)



The family having descended from two brothers, one half-share must be allotted to each branch. As to B's branch, D and his sons, D₁, D₂, and D₃, are each entitled to $\frac{1}{4}$ of $\frac{1}{2}$ i.e. $\frac{1}{8}$. As to C's branch, each of the

561; *Bhyroochund Rai v. Russoomunee* (1799), 1 Ben. Sel. Rep. 28 (new edition, 36); *Neelkaunt Rai v. Muneo Chowdraen* (1802), *ibid.* 58 (new edition, 77); *Talwaur Singh v. Puhlwan Singh* (1824), 3 Ben. Sel. Rep. 301 (new edition, 402); "Mitakshara," chap. i. s. 2, para. 6; chap. i. s. 3, paras. 1-7; "Smriti Chandrika," chap. ii. s. 2, para. 2; s. 3, paras. 16-24; "Vyavahara Mayukha," chap. iv. s. 4; paras. 8-11, 17; "Dayabhaga," chap. iii. s. 2, para. 27; "Daya-Krama Sangraha," chap. vii. para. 13; "Viramitrodaya," chap. ii. part i. ss. 11, 14. As to a usage to the contrary, see *Sheo Bukeh Sing v. Futeh Sing* (1818), 2 Ben. Sel. R. 265 (new edition, 340);

Wm. Macnaghten's "Hindu Law," vol. II. p. 16.

¹ *Bhimul Doss v. Choonee Lall* (1877), 2 Calc. 379; *Duljeet Sing v. Sheomunook Sing* (1802), 1 Ben. Sel. R. 59 (2nd ed., 79).

² *Ante*, p. 217.

³ "Mitakshara," chap. i. s. 5, para. 2; *Rajnaram Singh v. Heeralal* (1878), 5 Calc. 142.

⁴ "Mitakshara," chap. i. s. 3, paras. 1-7. See *Debi Parshad v. Thakur Dial* (1875), 1 All. 105, overruling *Madho Singh v. Bindessery Roy* (1868), 3 Agra H. C. 101.

⁵ *Manjanatha Shanabhaga v. Narayana Shanabhaga* (1882), 5 Mad. 362, at p. 364.

sub-branches composed of C's sons, E, F, and G, with their sons respectively, will be entitled to $\frac{1}{3}$ of $\frac{1}{2}$, i.e. $\frac{1}{6}$, so E and E₁ will each get $\frac{1}{2}$ of $\frac{1}{6}$, i.e. $\frac{1}{12}$, F, F₁, and F₂ will each get $\frac{1}{3}$ of $\frac{1}{6}$, i.e. $\frac{1}{18}$, G, G₁, G₂, G₃, and G₄ will each get $\frac{1}{6}$ of $\frac{1}{6}$, i.e. $\frac{1}{36}$. This illustration will apply to the Bengal school, except that under that school the sons do not take during the lifetime of their fathers.

This rule is laid down with reference to cases in which all the coparceners desire partition at the same time. Where there is a partition by some only of the coparceners, and subsequently there is a partition between the coparceners who had remained united after the first partition, the allotment of shares of the second partition must have regard to the state of the family before the first partition, with such variations as may have arisen in consequence of the death of coparceners or the birth of new coparceners.¹

As to the Jhala Girasias of Limri in Kattiawar, see *Prithisingji v. Umedsingji* (1904), 6 Bom. L. R. 98.

As to the Chudasama Girasias of Kharad in the Dhanduka Taluka, see *Malubhai v. Sursangji* (1905), 7 Bom. L. R. 821.

Except where there is a family usage to the contrary, sons by different mothers take equally.²

When daughters' sons,³ or *gotraja sapindas*⁴ other than descendants, succeed as heirs, they take on partition *per capita*.

As to the rights of purchasers, or mortgagees of shares, see *ante*, p. 316.

There is nothing to prevent adult coparceners making any arrangement as to the division, or as to the devolution of the shares,⁵ provided that they do not thereby alter the inheritance,⁶ or provide for the succession of unborn persons.⁷

SUBJECT OF PARTITION.

The coparcenary property,⁸ movable or immovable, is alone the subject of partition.

Property which has been proved to have, by ancient and

¹ See *Manjanatha Shanabhaga v. Narayana Shanabhaga* (1882), 5 Mad. 362.

² See *Subramanya Pandya Chokka Talavar v. Siva Subramanya Pillai* (1894), 17 Mad. 316, at p. 327; *Sumrun Singh v. Khadum Singh* (1814), 2 Ben. Sel. R. 116 (2nd ed., 147), Colebrooke's "Digest," vol. ii. p. 576.

³ *Ramdhun Sein v. Kishen Kanth*

Sein (1821), 3 Ben. Sel. R. 100 (2nd ed., 133).

⁴ *Nagesh v. Gururao* (1892), 17 Bom 303, at p. 305.

⁵ See *Kanti Chandra Mukerji v. Ali-i-Nabi* (1911), 33 All. 414; *Ram Nirunjun Singh v. Prayag Singh* (1881), 8 Calc. 138; 10 C. L. R. 66.

⁶ *Post*, pp. 506, 507.

⁷ *Post*, pp. 507, 508.

⁸ *Ante*, pp. 230-238.

invariable custom,¹ always descended to one individual, and to have been enjoyed by him alone, and not to have been divided,² is not coparcenary property,³ and is therefore not partible.

All property
to be divided.

A coparcener is entitled to insist that all the family property, which is capable of partition, shall be divided.

Leaseholds.

Leasehold property, including property held on a lease from Government, can be partitioned.⁴

Land in
occupation of
tenants.

Land in the possession of tenants can be partitioned,⁵ either by metes and bounds, or by a division of the rent.

Family
dwelling-
house.

A coparcener⁶ or purchaser⁷ is entitled to insist that the family dwelling-house be partitioned; but a purchaser may be required to sell his share therein to a coparcener.⁸

He has a similar right with regard to a compound hitherto held in common, and such right is not affected by the fact that there is a public right of way over such compound.⁹

"The principle . . . of partition is that if a property can be partitioned without destroying the intrinsic value of the whole property, or of the shares, such partition ought to be made. If, on the contrary, no partition can be made without destroying the intrinsic value, then a money compensation should be given instead of the share which would fall to 'a coparcener' by partition."¹⁰

Property in
its nature
indivisible.

Where property is in its nature indivisible, as, for instance,

¹ See *ante*, pp. 24, 25. *Koernarain Roy (Raja) v. Dhorinidhur Roy*, Ben. S. D. A. 1858, p. 1132.

² *Durriao Sing (Thakur) v. Davi Sing (Thakur)* (1873), 1 I. A. 1; 13 B. L. R. 165; *Ramalakshmi Ammal v. Sivananantha Perumal Sethurayer* (1872), 1 A. Sup. Vol. 1; 12 B. L. R. 396; 14 M. I. A. 570; 17 W. R. C. R. 553; *Adrishappa v. Gurushidappa* (1880), 7 I. A. 162; 4 Bom. 494; *Kachi Kaliyana Rengappa Kalakka Thola Udayar v. Kachi Yuva Rengappa Kalakka Thola Udayar* (1905), 32 I. A. 261; 28 Mad. 508; 10 C. W. N. 95. S. C. in Court below (1901), 24 Mad. 562. See *ante*, pp. 249-252.

³ *Ante*, pp. 252, 253.

⁴ *Dattatraya Vithal v. Mahadaji Parashram* (1891), 16 Bom. 528.

⁵ See *Uppala Raghava Charlu v. Uppala Ramanuja Charlu* (1902), 26 Mad. 78. As to partition between a coparcener and the ijaradar of another coparcener, see *Ram Lochi Koeri v. Collingridge* (1907), 11 C. W. N. 397.

⁶ *Hulodhur Mookerjee v. Ramnauth Mookerjee* (1862), Marsh. 35.

⁷ *Jhubboo Lal Sahoo v. Khooob Lal* (1874), 22 W. R. C. R. 294.

⁸ Act IV. of 1893 (Partition), s. 4, *post*, p. 341.

⁹ *Ram Pershad Narain Tewaree v. Court of Wards* (1874), 21 W. R. C. R. 152.

¹⁰ *Ashanullah v. Kali Kinkur Kur* (1884), 10 Calc. 675. This was a suit by a purchaser, but the principle applies to any case. See Strange's "Hindu Law," vol. ii. p. 329.

in the case of animals, furniture, etc., it can be allotted to individual coparceners, corresponding or equivalent parcels of the property being allotted to other coparceners, or the value being made up in money.

Where it is impossible or inequitable to allot a specific item to an individual, as where it consists of a right of way, a passage, a well, & bridge, it may be necessary that the item of property should continue to be jointly enjoyed by the several coparceners.¹

In some cases it may be necessary to sell the property and adjust the proceeds in the distribution.²

Places of worship and sacrifice,³ and property dedicated to an idol or to other pious uses, cannot be physically partitioned.⁴ Places of worship, etc.

Where merely a charge is created for religious purposes, the property can be alienated or partitioned subject to the charge.⁵

Apart from a dedication, the use to which property has been put, as, for instance, when it has been used as a *poojah dalan*, does not render it impartible, but the Court may, if the circumstances make it equitable, permit that portion to be allotted to a single sharer, and require him to pay owelty of partition (a sum of money as compensation), or to account for its value in the partition.⁶

As to partition of the worship or of the management, see *post*, pp. 543, 544.

HOW SEPARATION AND PARTITION CAN BE EFFECTED.

Under the Mitakshara school of law, a father can effect a partition between his sons with or without their consent.⁷

¹ See *Govind Annaji Bodhani v. Trimbak Govind Dhaneshwar* (1910), 12 Bom. L. R. 363.

² See Act IV. of 1893 (Partition), s. 2, *post*, pp. 340, 341.

³ *Anund Moyee Chowdhraïn v. Boykantinath Roy* (1867), 8 W. R. C. R. 193.

⁴ "Gautama Institutes," xxviii. 46; "Sacred Books of the East," vol. ii. p. 306; "Dayabhaga," chap. vi. s. 2, para. 26. *Rajender Dutt v. Sham Chund Mitter* (1880), 6 Calc. 106.

See Bhattacharya's "Law of the Joint Hindu Family," pp. 450, 451.

⁵ *Sonatun Bysack v. Juggutsoondree Dossee (Sreemutty)* (1859), 8 M. I A 66; *Ram Coomar Paul v. Jogender Nath Paul* (1878), 4 Calc. 56; 2 C. L. R. 310. *Post*, p. 519.

⁶ See *Rajcoomaree Dossee v. Gopal Chunder Bose* (1878), 3 Calc. 514.

⁷ *Kandasami v. Doraisami Ayyar* (1880), 2 Mad. 317. "Mitakshara," chap. i. s. 2, para. 2.

Separation
how effected.

Apart from the special powers given to a father by the Mitakshara law, the union of the coparceners in a joint family can be dissolved by any arrangement, express or implied, by which the coparceners alter, or intend to alter, their title as coparceners into a title either as tenants in common or as owners of separate shares, or by any change in the status of the coparceners, which is inconsistent with their being members of a joint family,¹ or by a decree of a competent Court,² or by the Revenue authorities.³

Parties.

All the coparceners should be parties to a separation or partition by arrangement,⁴ the guardians of minor coparceners acting on their behalf.⁵

Partial
partition.

By arrangement,⁶ the separation or partition may be partial as regards the persons separating, some of the coparceners electing to remain joint, their status *inter se* being unaffected by the separation.⁷

Coparceners may also by agreement arrange that a portion only of the property should be divided, the remainder remaining joint.⁸ They can afterwards partition the remainder of the property.⁹

¹ A mere change in the mode of holding the property is not conclusive, *post*, p. 334.

² *Post*, pp. 335, 336.

³ *Post*, pp. 342, 343.

⁴ As to the parties to a suit, see *post*, p. 336.

⁵ See *ante*, p. 314.

⁶ *Cf. post*, pp. 336, 337.

⁷ See *Rewun Persad v. Radha Beehy (Mussumat)* (1846), 4 M. I. A. 137, at p. 168; 7 W. R. P. C. 35, at p. 37; *Sudarsanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at pp. 156, 157; *Kandasami v. Doraisami Ayyar* (1880), 2 Mad. 317, at p. 324; *Radha Churn Dass v. Kripa Sindhu Dass* (1879), 5 Calc. 474; 4 C. L. R. 428; *Gavrishankar Parabhuram v. Atmaram Rajaram* (1893), 18 Bom. 611; *Anandibai v. Hari Suba Pat* (1911), 35 Bom. 293; 13 Bom. L. R. 287; *Jogendra Nath Rai v. Baladeo Das* (1907), 35 Calc. 961; 12 C. W. N. 127; *Upendranarain Myti*

v. Gopee Nath Bera (1883), 9 Calc. 817; 12 C. R. 356. Their relation to those who have separated is as divided members of a family, see *Manjanatha Shanabhaga v. Narayana Shanabhaga* (1882), 5 Mad. 362; *Kedar Nath (Maharaj) v. Ratan Singh (Thakur)* (1910), 37 I. A. 161; 22 All. 415; 14 C. W. N. 985; 12 Bom. L. R. 656. As to the presumption that the remainder of the family is joint, see *ante*, p. 316.

⁸ *Muthusami Mudaliar v. Nallakulantha Mudaliar* (1894), 18 Mad. 418; *Hoolas Koonwer (Mussumat) v. Man Singh* (1868), 3 Agra, 37; *Sudarsanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at p. 153; *Ajodhya Purshad v. Mahadeo Purshad* (1909), 14 C. W. N. 221.

⁹ *Jogendra Nath Rai v. Baladeo Das* (1907), 35 Calc. 961; 12 C. W. N. 127. See *Shamasoondery Dasse v. Kartick Churn Mittra* (1865), Bourke O. C. 326.

The fact that there had been a partial partition would ordinarily raise a presumption that the co-parceners had separated in estate and interest,¹ but such presumption is liable to be rebutted.²

For an arrangement providing for a future repartition, see *Duri Bhagavantulu v. Tadepatri Veeravadhanulu* (1909), 33 Mad. 246.

"Though there can be no compulsory partial partition either in respect of the joint property belonging to the family, or in respect of the persons constituting the undivided family,³ yet by mutual agreement of parties the partition can be partial either in respect of the property or of the persons constituting the family. And according to usage and custom the remaining members of an undivided family from which one or more alone have become divided, continue as an undivided family in its normal state and not as members, who after partition have been reunited."⁴

Where, from accident, mistake, or fraud, a portion of the coparcenary property is not included in a partition, such portion must be divided amongst the persons who took under the partition.⁵

Where, after the partition, it appears that property allotted to one of the coparceners did not belong to the coparcenary,⁶ or that a valid charge existed thereon,⁷ the coparcener to whom such property was allotted can insist upon the partition being reopened, or, at any rate, can claim compensation from the other parties to the partition.

A partition in title, *i.e.* a separation in estate can be effected, although there be no partition by metes and bounds.⁸

Accident,
mistake,
fraud.

Partition by
metes and
bounds
unnecessary.

¹ *Vaidyanatha Aiyar v. Aiyasami Aiyar* (1908), 32 Mad. 191; see *ante*, p. 216.

² See *Timmi Reddy v. Achamma* (1865), 2 Mad. H. C. 325.

³ *Post*, p. 337.

⁴ *Hoolas Koonwer (Mussumat) v. Man Singh* (1868), 3 Agra, 37; *Sudarshanam Maistri v. Narasimhulu Maistri* (1901), 25 Mad. 149, at p. 157. See *Peddaiya v. Ramalingam* (1888), 11 Mad. 406.

⁵ See *Jogendra Nath Rai v. Baladeo Das* (1907), 35 Calc. 961; 12 C. W. N. 127; *Bhowani Proshad Shahu v. Juggernath Shahu* (1909), 13 C. W. N. 309; *Lachman Singh v. Sanwal Singh* (1878), 1 All. 543; *Moro Vishvanath v. Ganesh Vitthal* (1873), 10 Bom. H. C.

444, at pp. 451, 469; "Mitakshara," chap. i. s. 9, para. 1; "Dayabhaga," chap. xiii. paras. 1-3; "Vyavahara Mayukha," chap. iv. s. 6, para. 3.

⁶ *Maruti v. Rama* (1895), 21 Bom. 333.

⁷ *Lakshman v. Gopal* (1898), 23 Bom. 385.

⁸ *Parbati (Musummat) v. Naurihal Singh (Chaudhri)* (1909), 36 I. A. 71; 31 All. 412; 13 C. W. N. 983; 11 Bom. L. R. 878; *Balkishen Das v. Ramnarain Sahu* (1903), 30 I. A. 139, at p. 148; 30 Calc. 738, at p. 751; 7 C. W. N. 578, at p. 589; 5 Bom. L. R. 461; *Appovier v. Rama Subba Ayyan* (1866), 11 M. I. A. 75; 8 W. R. P. C. 1; *Radhika Patta Maha Devi Garu (Sri Gajapathi) v. Nilamani*

A separation in estate has no application to impartible property, as there is nothing upon which such separation can operate.¹

The effect of this separation will be to exclude rights of survivorship according to Mitakshara law, and to make the parties tenants in common as to the property.²

There may be a separation of the members of the family and at the same time an arrangement for the sake of convenience that the property, or a portion of it,³ should remain joint, but be held in defined shares. In that case the rights of the separating coparceners *inter se* are those of ordinary tenants in common, and are free from the incidents applicable to a joint family.⁴

There would, in the absence of a valid agreement,⁵ be a right to enforce a partition of such property by metes and bounds subsequently.⁶

Any instrument whereby co-owners of any property divide any property in severalty is an instrument of partition.⁷

A separation or a partition can be effected without an instrument in writing.⁸

Patta Maha Devi Garu (Sri Gajapathi) (1870), 13 M. I. A. 497; 6 B. L. R. 202; 14 W. R. P. C. 33; *Doorga Pershad (Baboo) v. Kundun Koowar (Mussumat)* (1873), 1 I. A. 55; 13 B. L. R. 235; 21 W. R. C. R. 214; *Jusoda Koonwur (Mussamut) v. Gourie Byjonath Sohee Singh* (1866), 6 W. R. C. R. 139; *Sreepershad (Lalla) v. Akoonjoo Koonwar (Mussamut)* (1867), 7 W. R. C. R. 488; *Mohabeer Pershad (Lalla) v. Kundun Koowar (Mussamut)* (1867), 8 W. R. C. R. 116; *Badaruth Tewary v. Jagurnath Dass* (1869), 1 N. W. P. 75; *Jeoneee (Mussumat) v. Dhurum Kooer* (1871), 3 N. W. P. 108; *Sobha Kooeree (Mussamut) v. Hurdey Narain Mohajun* (1876), 25 W. R. C. R. 97.

¹ *Ante*, p. 253.

² *Ante*, p. 213.

³ *Patni Mal (Rajah) v. Manohar Lal (Ray)* (1834), 5 Bom. Sel. R. 349 (2nd ed. 410).

⁴ *Appovier v. Rama Subba Aiyyan* (1866), 11 M. I. A. 75; 8 W. R. P. C. 1; *Narayan Ayyar v. Lakshmi*

Anmal (1867), 3 Mad. H. C. 289; *Venkata Gopalla Narasimha Row Bahadoor (Rajah Suraneni) v. Lakshma Venkama Row (Rajah Suraneni)* (1869), 13 M. I. A. 113; 3 B. L. R. P. C. 41; 12 W. R. P. C. 40; S. C. in Court below, (1866), 3 Mad. H. C. 40. See *Rewun Persad v. Radha Beeby (Mussumat)* (1846), 4 M. I. A. 137, at p. 168; 7 W. R. P. C. 35, at p. 37; *Ramabhadra (Rajah Setrucherla) v. Virabhadra Suryanarayana (Rajah Setrucherla)* (1899), 26 I. A. 167; 22 Mad. 470; 3 C. W. N. 533; 1 Bom. L. R. 388; *Muhesh Doobey v. Kishun Doobey* (1869), 1 N. W. P. 42.

⁵ As to an agreement not to partition, see *ante*, p. 310.

⁶ *Lade v. Sadashiva* (1904), 6 Bom. L. R. 35. See *Subbaraya Tawker v. Rajaram Tawker* (1901), 25 Mad. 585.

⁷ *In re Govind Pandurang Kamat* (1910), 35 Bom. 75; 12 Bom. L. R. 936.

⁸ *Rewun Persad v. Radha Beeby (Mussumat)* (1846), 4 M. I. A. 137, at p. 168; 7 W. R. P. C. 35, at p. 37;

"The true test of partition of property, according to Hindu law, is the intention of the family to become separate owners." ¹ Question is one of intention.

The question is one of intention merely, viz. whether the intention of the parties, to be inferred from the instruments which they have executed and the acts they have done, was to effect a division such as to alter the status of the family.²

An agreement between the coparceners to hold and enjoy the property in severalty operates as a separation in estate, although there may have been no actual partition by metes and bounds,³ and although the separate possession and enjoyment be postponed until the agreement be fully carried into effect.⁴ Agreement to separate.

"When the members of an undivided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership, in certain defined shares,⁵ then the character of undivided property and joint enjoyment is taken from the subject-matter so agreed to be dealt with; and in the estate each member has thenceforth a definite and certain share, which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided."⁶

Budha Mal v. Bhagwan Das (1890), 18 Calo. 302; *Latchumammal v. Ganammal* (1910), 34 Mad. 72. By Act II. of 1884, effect was given to unregistered partition deeds which had been executed in the Madras Presidency.

¹ *Ram Pershad Singh v. Lakhpati Koer* (1902), 30 I. A. 1, at p. 10; 30 Calo. 23, at p. 253; 7 C. W. N. 162, at p. 168; 5 Bom. L. R. 103.

² *Doorga Pershad (Baboo) v. Kundun Koonwar (Mussumat)* (1873), 1 I. A. 55, at p. 68; 13 B. L. R. 235, at p. 239; 21 W. R. C. R. 214, at p. 215; *Balkshen Das v. Ram Narain Sahu* (1903), 30 I. A. 139, at p. 147; 30 Calo. 738, at p. 750; 7 C. W. N. 578, at p. 588.

³ *Appover v. Rama Subba Aiyar* (1866), 11 M. I. A. 75, at p. 90; 8 W. R. P. C. 1; *Balkshen Das v. Ramnarain Sahu* (1903), 30 I. A. 136; 30 Calo. 738; 7 C. W. N. 578; 5 Bom. L. R. 461; *Venkata Gopalla Narasimha Roy Bahadoor (Raja Suraneni) v. Lakshama Venkama Row (Raja Suraneni)* (1869), 13 M. I. A. 113; 3

B. L. R. P. C. 41; 12 W. R. P. C. 40; *Doorga Pershad (Baboo) v. Kundun Kowar (Mussumat)* 1 I. A. 55; 13 B. L. R. 235; 21 W. R. C. R. 214; *Madho Parshad v. Mehrban Singh* (1890), 17 I. A. 194; 18 Calo. 157.

⁴ *Tej Pratap Singh v. Champa Kalee Koer* (1885), 12 Calo. 96, at p. 103.

⁵ A mere definement of shares is not sufficient, see cases, *post*, p. 332, note 6, and pp. 333, 334.

⁶ *Appover v. Rama Subba Aiyar* (1866), 11 M. I. A. 75, at p. 90; 8 W. R. P. C. 1. See *Hurdwar Singh v. Luchmun Singh* (1868), 3 Agra, 41; *Ananta Balacharya v. Damodhar Makund* (1888), 13 Bom. 25; *Pareotam Rao Tanta v. Janki Bai* (1907), 29 All. 354; *Madho Parshad v. Mehrban Singh* (1890), 17 I. A. 194; 18 Calo. 157; *Budha Mal v. Bhagwan Das* (1890), 18 Calo. 302; *Shibnarain Bose v. Ram Nidhee Bose* (1868), 9 W. R. C. R. 87; *Kulponath Doss v. Mewah Lall* (1867), 8 W. R. C. R. 302; *Deo Bunsee Koer (Mussumat) v. Dwarkanath* (1868), 10 W. R. C. R.

An arrangement by which property was allotted to a younger brother for his maintenance does not alter the course of descent of the property.¹

The legal construction of the agreement cannot be controlled or altered by the subsequent conduct of the parties,² except where there has been in law a valid reunion.³

Mere agreement to divide.

It has been held that where there is no indication of an intention to presently appropriate and enjoy in a manner inconsistent with the ordinary state of enjoyment of an undivided family, an agreement to divide without more is of itself insufficient to effect a separation.⁴

Definition in petitions, etc.

The fact that in documents executed by the coparceners, such as petitions to the Revenue or other authorities, or under the Land Registration Act,⁵ there is a definition of an interest in the joint estate, in terms of a fraction of the whole, without any indication of an intention to divide interests and liabilities, is insufficient to constitute a legal dissolution of a joint family, although it is evidence of a separation.⁶ Separation may be inferred from definement of shares, followed by entries of separate interests in the Revenue records.⁷

Sale of share.

When a cosharer sells his rights in the family property to another coparcener, such sale amounts to a separation, so far as the vendor is concerned.⁸

Act or declaration by one coparcener.

There is considerable authority that an unequivocal act or declaration by a coparcener, showing his intention to hold his share separately, effects a separation ;⁹ but if this be so, the

273 ; S. C. *Deowants Kunwar (Mussamut) v. Dwarkanath*, 8 B. L. R. 363, note (a case of the separation of two branches of a family).

¹ *Rajya Lakshmi Devi Garu (Sri Raja Viravara Thodramal) v. Surya Narayana Dhatrazu Bahadur Garu (Sri Raja Viravara Thodramal)* (1897), 24 I. A. 118 ; 20 Mad. 256.

² *Balkishen Das v. Ramnarain Sahu* (1903), 30 I. A. 139 ; 30 Calc. 738 ; 7 C. W. N. 578 ; 5 Bom. L. R. 461.

³ *Post*, pp. 343, 344.

⁴ *Babaji Parshram v. Kashibai* (1879), 4 Bom. 157.

⁵ Act VII. (B. C.) of 1876.

⁶ *In the matter of Phuljhari Koer (Mussamat)* (1872), 8 B. L. R. 385 ; 17 W. R. C. R. 102 ; *Muktakasi Debi v. Ubabati* (1870), 8 B. L. R. 396,

note ; 14 W. R. C. R. 31 ; *Ambika Dat v. Sakhamani Kuar* (1877), 1 All. 437 ; *Hoolash Koer v. Kaseee Proshad* (1881), 7 Calc. 369.

⁷ *Ram Lal v. Debi Dat* (1888), 10 All. 490 ; see *post*, p. 334.

⁸ *Balkrishna Trimbak Tendulkar v. Savitribai* (1878), 3 Bom. 54. See *Appa Pillai v. Runga Pillai* (1882), 6 Mad. 71, as to an arrangement without consideration.

⁹ *Raghubanund Doss v. Sadhuchurn Doss* (1878) 4 Calc. 425 ; 3 C. L. R. 534 ; *Bulakee Lall v. Indurputtee Kowar (Mussamat)* (1865), 3 W. R. C. R. 41 ; *Vato Koer (Mussamat) v. Rowsun Singh* (1867), 8 W. R. C. R. 82 ; *Sudaburt Pershad Sahoo v. Loft Ali Khan* (1870), 14 W. R. C. R. 339, at pp. 345, 346 ; *Joynarain*

mere filing of a suit for partition ¹ would operate to effect a separation, whereas the authorities ² only contemplate separation being effected by a decree in such suit, and moreover the expressions used in *Appovier's Case*,³ and the cases following it, seem, it is submitted, to show that there must be an agreement.⁴ Such signification of intention might perhaps, if not repudiated, when communicated to the coparcener, be taken to imply an agreement.

It is submitted that a mere expression of intention is not sufficient, but action of some kind in furtherance of such intention is required in order to effect a separation. An agreement is not necessary, as a coparcener is entitled as of right to effect a separation.⁵

A loss by a cosharer of his rights by operation of the law of limitation amounts to a separation of that cosharer, so far as the family property is concerned.⁶

Loss of share
by limitation.

As under the Bengal school each coparcener has a defined share the distinction between separation and partition by metes and bounds has not the same importance as under the Mitakshara school, but there may be such a distinction when a claim is made by the family to property which was acquired by the coparcener before separation.

Bengal
School.

Separation may be proved by acts or declarations ⁷ which show such agreement and intention to separate, such as cesser of commensality,⁸ separate occupation of portions of the property,⁹ separate enjoyment of distinct shares of the profits,¹⁰

Proof of
separation.

Giri v. Goluck Chunder Mytee (1876), 25 W. R. C. R. 355. The appeal from this last decision was decided on another ground, 5 I. A. 228; 4 Calc. 434. See *Phoolbas Kooer (Must.) v. Juggessur Sahoy (Lalla)* (1872), 18 W. R. C. R. 48; *Debee Pershad v. Phool Koeree* (1869), 12 W. R. C. R. 510.

¹ A suit for possession of a share would not be sufficient. *In the matter of Phul Koori* (1869), 8 B. L. R. 388, note; *S. C. Debee Pershad v. Phool Koeree* (1869), 12 W. R. C. R. 510.

² *Post*, p. 335.

³ *Ante*, p. 331.

⁴ See *Muktakasi Debi v. Uba-hati* (1870), 8 B. L. R. 396, note; 14 W. R. C. R. 31; *Ashabai v. Tyeb Haji Rahimtulla* (1882), 9 Bom. 115.

⁵ *Ante*, p. 310.

⁶ See *Moro Vishvanath v. Ganesh Vithal* (1873), 10 Bom. H. C. 444, at p. 452.

⁷ *Jivubai v. Krishnaji* (1904), 6 Bom. L. R. 351.

⁸ See *Ganesh Dutt Thakoor (Chowdhry) v. Jewach Thakoorain (Mussummat)* (1903), 31 I. A. 10; 31 Calc. 262; 8 C. W. N. 146; 6 Bom. L. R. 1; *Joynarain Giri v. Goluck Chunder Mytee* (1876), 25 W. R. C. R. 355.

⁹ *Murari Vithoji v. Mukund Shivaji Naik Golatkar* (1890), 15 Bom. 201; *Moro Vishvanath v. Ganesh Vithal* (1873), 10 Bom. H. C. 444, at p. 453; *Surbessur Methoor v. Gossain Doss Methoor* (1872), 17 W. R. C. R. 210.

¹⁰ *Chyett Narain Singh v. Bunwaree Singh* (1875), 23 W. R. C. R. 395; *Jeonee (Mussumat) v. Dhurum Kooer*

separate definement of shares in the Revenue records,¹ agreement to divide the proceeds in definite shares,² or other acts which are inconsistent with the family remaining joint, such as separate transactions between themselves or with others.³

Mere cesser of commensality,⁴ division of the income,⁵ definement of shares in the revenue⁶ or land registration⁷ records, separate occupation of portions of the property,⁸ or separate collection of rents,⁹ or separate dealings,¹⁰ are not conclusive, unless there is an intention to separate. They are all evidence of separation, and may lead to the inference that there was a separation.¹¹

The fact that a man availed himself of his near agnatic relations in the administration of his property at the same time that he gave them maintenance and paid the expenses of their marriage and other ceremonies is not inconsistent with his position as a separated member.¹²

(1871), 3 N. W. P. 108; *Kalska Sahoy v. Gouree Sunkur* (1869), 12 W. R. C. R. 287; *Mohabeer Pershad (Lalla) v. Kundun Koowar (Mussamat)* (1867), 8 W. R. C. R. 116; *Adi Deo Narain Singh v. Dukharam Singh* (1883), 5 All. 532; *Mohroo Kooeree (Musst.) v. Gunsoo Kooeree (Musst.)* (1867), 8 W. R. C. R. 385.

¹ *Ram Lal v. Debi Dat* (1888), 10 All. 490; *Ram Pershad Singh v. Lakhpati Koer* (1902), 30 I. A. 1; 30 Calc. 231; 7 C. W. N. 162; 5 Bom. L. R. 103. See *Ambika Datt v. Sukhmani Kuar* (1877), 1 All. 437. See ante, p. 332.

² *Ram Kissen Singh (Maharajah) v. Sheonund Singh (Rajah)* (1875), 23 W. R. C. R. 412.

³ *Sumundra Koonwar v. Kalee Churn Singh* (1870), 13 W. R. C. R. 197; 8 B. L. R. 390, note. "Narada," chap. xiii. paras. 40, 41; "Dayabhaga," chap. xiv. paras. 7, 8, 9; Colebrooke's "Digest," vol. iii. p. 407.

⁴ *Ganesh Dutt Thakoor (Chowdhry) v. Jewach Thakoorain (Mussamat)* (1903), 31 I. A. 10; 31 Calc. 262; 8 C. W. N. 146; *Rewun Pershad v. Radha Beeby (Mussamat)* (1846), 4 M. I. A. 137, at p. 168; 7 W. R. P. C. 35, at p. 37; *Anundee Koonwur (Mussamat) v. Khedoo Lal* (1872), 14 M. I. A. 412; 18 W. R. C. R. 69; *Belas Koer (Mussamat) v. Bhowanee Buks (Baboo)* (1863), Marsh. 641; *Chhabila Manchand v. Jadarbai* (1866), 3 Bom. H. C. O. C. 87;

Krisnappa Chetty v. Ramasawmy Iyer (1875), 8 Mad. H. C. 25; *Shubnarain Bose v. Ram Nidhee Bose* (1868), 9 W. R. C. R. 87; *Jivubai v. Krishnaji* (1904), 6 Bom. L. R. 351. See *Khilut Chunder Ghose v. Koonjilal Dhur* (1868), 11 B. L. R. 194, note; 10 W. R. C. R. 333.

⁵ *Sonatun Bysack v. Juggutsoondree Dossee* (1859), 8 M. I. A. 66, at p. 86.

⁶ *Ambika Dat v. Sukhmani Kuar* (1877), 1 All. 437, commented on in *Tej Pratap Singh v. Champa Kalee Koer* (1885), 12 Calc. 96, at p. 104; *Gajendar Singh v. Sardar Singh* (1896), 18 All. 176.

⁷ *Hoolash Kooer v. Kassee Proshad* (1881), 7 Calc. 369.

⁸ *Runjeet Singh v. Gujraj Singh (Kooer)* (1873), 1 I. A. 9; *Babashet v. Jirshet* (1868), 5 Bom. H. C. A. C. 71; *Moro Vishvanath v. Ganesh Vithal* (1873), 10 Bom. H. C. 444, at p. 453; *Chhabila Manchand v. Jadarbas* (1866), 3 Bom. H. C. O. C. 87. See *Luchmun Pershad v. Moonee Koonwer (Mussamat)* (1866), 1 Agra, 220.

⁹ *Badamoo Kooer v. Wazeer Sing* (1866), 5 W. R. C. R. 78, differed from in *Vato Koer (Mussamat) v. Rowshun Singh* (1867), 8 W. R. C. R. 82.

¹⁰ *Krisnappa Chetty v. Ramasawmy Iyer* (1875), 8 Mad. H. C. 25.

¹¹ See *Jagun Kooer v. Rughoonundun Lall Shahoo* (1868), 10 W. R. C. R. 128.

¹² *Deoki Singh v. Anupa (Mussamat)* (1905), 10 C. W. N. 338.

Conversion to Mahomedanism,¹ or to Christianity,² *ipso facto* separates the convert from the coparcenary. Conversion from Hinduism.

A decree for partition is on the same footing as an agreement for partition.³ Decree for partition.

A decree directing partition,⁴ or a decree giving effect to a suit, which, though not in terms seeking a partition, indicates a distinct intention of obtaining a separation in estate, or an award by arbitrators,⁵ operates as a separation.⁶ Decree.

The fact that the decree postpones the vesting of the share does not make any difference.⁷

It has been held that the decree does not create a severance pending an appeal,⁸ but if pending the appeal the parties treat the decree as creating a severance it has such effect.⁹

Where, in a suit for general partition of a family estate, the plaintiff succeeded with regard only to a small portion thereof, it was held that the family did not in consequence of these proceedings become a divided one.¹⁰

In a case under the Bengal school of law, where the parties disregarded the decree, and continued to live as a joint family, it was held that there was no separation.¹¹

¹ *Gobind Krishna Narain v. Abdul Qayyum* (1903), 25 All. 564, at p. 593; *Gobind Krishna Narain v. Khunni Lal* (1907), 29 All. 487. This decision was reversed on appeal on another point, *post*, p. 358, note 8, see *ante*, p. 20.

² *Abraham v. Abraham* (1863), 9 M. I. A. 199, at p. 241; 1 W. R. P. C. 1, at p. 5, see *ante*, p. 20, note 2.

³ *Tej Pratap Singh v. Champa Kalee Koer* (1885), 12 Calc. 96; *Babaji Parshram v. Kashibai* (1879), 4 Bom. 157.

⁴ *Chidambaram Chettiar v. Gouri Nachiar* (1879), 6 I. A. 177; 2 Mad. 83; *Subbaraya Mudali v. Manika Mudali* (1896), 19 Mad. 345; *Lade v. Sadashiva* (1904), 6 Bom. L. R. 35. In *Babaji Parshram v. Kashibai* (1879), 4 Bom. 157, a mere decree for partition was held not to operate as a separation.

⁵ *Krishna Panda v. Balaram Panda* (1896), 19 Mad. 290; *Subbaraya Chetti v. Sadashiva Chetti* (1897), 20 Mad. 490.

⁶ *Joy Narain Giri v. Grish Chunder*

Myti (1878), 5 I. A. 228; 4 Calc. 434, distinguishing *Debee Pershad v. Phool Koeree* (1869), 12 W. R. C. R. 510. The mere determination of the shares by a preliminary decree is not tantamount to partition, although it may effect a severance of the joint interest. *Jogendra Nath Roy v. Baladeo Das* (1907), 35 Calc. 961, at p. 966; 12 C. W. N. 127, at p. 129.

⁷ *Lakshman Darku v. Narayan Lakshman* (1899), 24 Bom. 182.

⁸ *Sakharam Mahadev Dange v. Hari Krishna Dange* (1881), 6 Bom. 113.

⁹ See *Joynarain Giri v. Grish Chunder Myti* (1878), 5 I. A. 228; 4 Calc. 434.

¹⁰ *Mallikarjuna Prasada Nayudu (Raja Yarlagadda) v. Durga Prasada Nayudu (Raja Yarlagadda)* (1900), 27 I. A. 151; 24 Mad. 147; 5 C. W. N. 74; 2 Bom. L. R. 350.

¹¹ *Prawn Kissen Mitter v. Ram Sunderee Dossee (Sreemutty)* (1842), Fulton, 410. See *Babaji Parshram v. Kashibai* (1879), 4 Bom. 157.

Order for sale
of share.

An order for sale of a share of family property in execution of decree would not create a separation.¹

"The disruption of a joint family cannot be effected by an order of Court against the intention of the parties, unless it be followed by an actual conversion of the joint tenancy into a tenancy in common, or an actual partition by metes and bounds."²

Suit for
partition.

A suit for partition may be brought by a person who is entitled to a partition.³

Limitation.

A suit for partition is barred when twelve years have expired from the time when exclusion of the plaintiff from the coparcenary property becomes known to him.⁴

Res judicata.

A decree in such suit bars the trial in another suit of questions determined in that suit.⁵

Parties to
suits.

All persons entitled to a share on partition, including the wife, mother, or grandmother, and purchasers of undivided shares⁶ or mortgagees, should be parties to a suit for partition.⁷

Property in
suit.

A suit for partition must include all the property which is partible⁸ and available for partition at the time,⁹ and is

¹ *Mudrit Narayan Singh v. Ranglal Singh* (1902), 29 Calc. 797, at p. 801.

² *Ibid.*

³ See *ante*, pp. 310-314, as to who is entitled to partition.

⁴ Act IX. of 1908, Sched. I. art. 27. See *Saroda Soondury Dossee v. Doyamoyee Dossee* (1880), 5 Calc. 938; *Jaganatha v. Ramabhadra* (1888), 11 Mad. 380; *Dhoorjety Subbaya v. Dhoorjety Venkayya* (1906), 30 Mad. 201; *Ajodhya Purshad v. Mahadeo Purshad* (1909), 14 C. W. N. 221.

⁵ *Parrotam Rao Tantia v. Radha Bai* (1910), 32 All. 469.

⁶ *Ante*, p. 316. *Laljeet Singh v. Raj Coomar Singh* (1873), 12 B. L. R. 373, at p. 383; 20 W. R. C. R. 336, at p. 340.

⁷ Civil Procedure Code (Act V. of 1908), order i. rules 3, 4; Act XIV. of 1882, ss. 26, 28; *Pahalad Singh v. Luchmunbutty (Mussamut)* (1869), 12 W. R. C. R. 256.

⁸ Civil Procedure Code, 1908, Sched. I. order ii. r. 1; Act XIV. of 1882, s. 43; *Hasmat Rai (Koer) v. Sunder Das*

(1885), 11 Calc. 396, and cases, note 2 below; *Trimbak Dixit v. Narayan Dixit* (1874), 11 Bom. H. C. 69; *Ganpat v. Annaji* (1898), 23 Bom. 144; *Nanabhai Vallabhaas v. Nathabhai Haribhai* (1870), 7 Bom. H. C. A. C. 46; *Narayan Babaji v. Nana Manohar* (1870), 7 Bom. H. C. A. C. 153, at p. 178; *Haridas Sanyal v. Pran Nath Sanyal* (1886), 12 Calc. 566. *Contrâ Padmamani Dasi (Srimati) v. Jagadamba Dasi (Srimati)*, 6 B. L. R. 134, at p. 140. See *Parbati Churn Deb v. Ain-ud-deen* (1881), 7 Calc. 577; 9 C. L. R. 170.

⁹ See *Pattaravy Mudali v. Audi mula Mudali* (1870), 5 Mad. H. C. 419. Thus, where property has been mortgaged with possession it need not be brought into the partition. *Kristayya v. Narasimham* (1900), 23 Mad. 608; *Balkrishna Vithal v. Hari Shankar* (1871), 8 Bom. H. C. A. C. 64; *Narayan Babaji v. Pandurang Ramchandra* (1875), 12 Bom. H. C. 148, at p. 155; *Shivmurteppa v. Virappa* (1899), 24 Bom. 128; 1 Bom. L. R. 620.

within the limits of the jurisdiction of the Court in which the suit is brought.¹

There is authority that when the suit does not include all the coparcenary property the suit should be dismissed,² but it is submitted that where the objection is raised, the proper course is to permit the plaintiff to amend his plaint so as to include the whole property.³

In a suit filed in the ordinary original jurisdiction of the High Court there is no difficulty in including other property after an interlocutory decree for partition.

In a suit for partition the judge must first find that the plaintiff had a title to the property.⁴

A defendant may insist that joint property which is not mentioned in the plaint be brought into the partition,⁵ even if it be situate outside the territorial jurisdiction of the Court in which the suit is brought,⁶ provided it can be dealt with in the suit, but he cannot require the plaintiff to bring into the partition land which is outside British India.⁷

Where no objection is raised by the parties there seems to be no reason why a partial partition, which is partial either as to property⁸ or to the parties,⁹ should not be effected even in a suit.⁹

Partial partition.

There would be a right to subsequent partition.¹⁰

When the coparcenary property is situate within the jurisdiction of more than one Court, suits can be brought in the several Courts having jurisdiction.¹¹

Property within different jurisdictions.

¹ *Punchanun Mullick v. Shib Chunder Mullick* (1887), 14 Calc. 835.

² See *Jogendra Nath Mukerji v. Jugobundhu Mukerji* (1886), 14 Calc. 122; *Ramjoy Ghose v. Ram Runjun Chuckerbutti* (1881), 8 C. L. R. 367; *Haridas Sanyal v. Pran Nath Sanyal* (1886), 12 Calc. 566.

³ See *Punchanun Mullick v. Shib Chunder Mullick* (1887), 14 Calc. 835.

⁴ *Shashi Bhushan Beed v. Jotindra Nath Roy Chowdhry* (1911), 38 Calc. 681.

⁵ See *Shivmurteppa v. Virappa* (1899), 24 Bom. 128; 1 Bom. L. R. 620.

⁶ *Hari Narayan Brahma v. Gunpatrav Daji* (1883), 7 Bom. 272; *Laljeet Singh (Baboo) v. Raj Coomarr Singh (Baboo)* (1876), 25 W. R. 353

Ram Lockun Pattuck v. Rughoobur Dyal (1871), 15 W. R. C. R. 111; *Balarum Bhaskarji v. Ramchandra Bhaskarji* (1898), 22 Bom. 922, at p. 928.

⁷ *Ramacharya v. Anantacharya* (1893), 18 Bom. 389; *Purushottam v. Atmaram* (1899), 23 Bom. 597; 1 Bom. L. R. 76.

⁸ See *Chander Shekhar v. Kundan Lal* (1908), 31 All. 3.

⁹ See *Manjanatha Shanabhaga v. Narayana Shanabhaga* (1882), 5 Mad. 362. As to a partial partition by arrangement, see *ante*, p. 328.

¹⁰ *Bhowani Proshad Shahu v. Juggenath Shahu* (1909), 13 C. W. N. 309, see *ante*, p. 326.

¹¹ *Subba Rau v. Rama Rau* (1867), 3 Mad. H. C. 376; *Punchanun Mul-*

When there is property of the family held jointly by the whole family with other persons, a separate suit should be brought for partition of such property,¹ except where such persons have bought the interests of coparceners in the coparcenary property.

A separate suit will lie with regard to property which belongs to some of the coparceners only.²

Purchaser
of share.

A purchaser of a share of one of the coparceners in a portion of the coparcenary property is, when such purchase is permissible,³ entitled to bring a suit for partition of that portion only, when such partial partition will not cause much inconvenience to the other sharers,⁴ but any coparcener may require his share in the whole of the coparcenary property to be ascertained and partitioned in such suit.⁵

A coparcener is entitled to bring against such purchaser a partition suit limited to the property so purchased.⁶

As to the rights of purchasers or mortgagees of shares on a partition, see *ante*, pp. 288, 316.

Where a portion of the family property has passed entirely into the hands of strangers, there is no reason why the right thereto should not be determined without reference to the remaining property of the family.⁷

Inquiry as to
property.

In the case of a decree for partition and of a partition by arrangement, it is necessary to ascertain the amount of the coparcenary property, and what is available for partition.

lick v. Shib Chunder Mullick (1887), 14 Calc. 835. *Balaram Bhaskary v. Ramchandra Bhaskary* (1898), 22 Bom 922. See *Javram Narayan Raje v. Atmaram Narayan Raje* (1880), 4 Bom 482; *Padmamani Dasi (Srimati) v. Jagadamba Dasi (Srimati)* (1871), 6 B. L. R. 134

¹ See *Purushottam v. Atmaram Janardan* (1899), 23 Bom. 597; 1 Bom. L. R. 76.

² *Lachmi Narain v. Janki Das* (1901), 23 All 216

³ *Ante*, pp. 287-289.

⁴ *Hari Krishna Chowdary (Duvvada) v. Venkata Lakshmi Narayana (Sripada)* (1910), 34 Mad. 402.

⁵ *Muraraq v. Sitaram* (1898), 23 Bom. 184; *Shivmurteppa v. Virappa* (1899), 24 Bom. 128; 1 Bom. L. R. 620; see *Pandurang Anandray v. Bhaskar Shadashiv* (1874), 1 Bom.

H. C. 72; *Ram Mohan Lal v. Mulchand* (1905), 28 All. 39; *Ibarama Routhan v. Theruvenkatasami Nasck* (1910), 34 Mad. 269. See *Venkatarama v. Meera Labas* (1859), 13 Mad. 275, approved of in *Palani Konan v. Masa Konan* (1890), 20 Mad. 243; *Subramanya Chettyar v. Padmanabha Chettyar* (1896), 19 Mad. 267. See, however, *Hasmat Rai (Koer) v. Sunder Das* (1885), 11 Calc. 396, at p. 399.

⁶ *Ram Charan v. Ajudhia Prasad* (1905), 28 All. 50; *Chinna Sanyasi Razu (Sripati) v. Suriya Razu (Sripati)* (1882), 5 Mad. 196; *Subramanya Chettyar v. Padmanabha Chettyar* (1896), 19 Mad. 267. See *Venkayya v. Lakshmayya* (1892), 16 Mad. 98.

⁷ *Subbarazu v. Tenkataratnam* (1891), 15 Mad. 234.

The presumption is that, "in the absence of evidence, the property for partition is such as exists at the time of the suit for partition."¹

An inquiry as to what the coparcenary property consists of generally involves, it is submitted, an account of the rents and profits which have been received by the manager.²

Where one member of the family has been entirely excluded from the enjoyment of the property, he would be entitled to an account of *mesne profits* on an ordinary footing.³

An account of *mesne profits* is also allowed when an arrangement for the enjoyment of the property in specific and definite shares has been disturbed.⁴

In the absence of an express agreement a coparcener is not entitled to credit for sums laid out by him in the improvement or upkeep of the coparcenary property.⁵

Provision must first be made for all debts due by the family as such,⁶ including debts due by the father of separating brothers,⁷ and also for all proper charges upon the family property for maintenance,⁸ the marriages of dependent female members,⁹ the expenses of whose marriages are not payable out of individual shares, and such religious ceremonies as are payable by the whole family,¹⁰ and cannot be adjusted so as to be paid out of individual shares.

¹ *Damodardas Maneklal v. Uttamram Maneklal* (1892), 19 Bom. 271, at p. 279.

² See *ante*, p. 261.

³ *Krishna v. Subbanna* (1884), 7 Mad. 564; *Bhivrao v. Sitaram* (1874), 19 Bom. 532; *Konerrav v. Gurrav* (1881), 5 Bom. 589, at p. 595; *Venkata Narasimha Appa Row Bahadur (Rajah) v. Narayya Appa Row Bahadur (Rajah)* (1879), 7 I. A. 38, at p. 51; 2 Mad. 128, at p. 137; 6 C. L. R. 153, at p. 162. See Civil Procedure Code (Act V. of 1908), order xx. rule 12.

⁴ *Shankar Baksh v. Hardeo Baksh* (1888), 16 I. A. 71; 16 Calo. 397. See *Ramabhadra (Rajah Setrucherla) v. Virabhadra Suryanarayana (Rajah Setrucherla)* (1899), 26 I. A. 167; 22 Mad. 470; 3 C. W. N. 533; 1 Bom. L. R. 368.

⁵ *Matuvami Gaundan v. Subbira-maniya Gaundan* (1863), 1 Mad. H. C. 309. See *post*, p. 340.

⁶ See *ante*, p. 264.

⁷ *Tara Chand v. Reeb Ram* (1866),

3 Mad. H. C. 177, at p. 181; *Lakshman Dada Naik v. Ramchandra Dada Naik* (1876), 1 Bom. 561; "Dayabhaga," chap. i. para. 47; "Vyavahara Mayukha," chap. iv. s. 6, paras. 1, 2; chap. v. s. 4, para. 14; Colebrooke's "Digest," vol. iii. pp. 73, 389, 390.

⁸ *Ante*, pp. 227, 260.

⁹ "Dayabhaga," chap. iii. s. 2, para. 39; "Mitakshara," chap. i. s. 7, para. 5; Colebrooke's "Digest," vol. iii. p. 96; Strange's "Hindu Law," vol. ii. p. 313.

¹⁰ As to the expenses of initiation, see "Mitakshara," chap. i. s. 7, paras. 3, 4; "Dayabhaga," chap. iii. s. 2, para. 41; Colebrooke's "Digest," vol. iii. pp. 96, 97. As to the funeral expenses of the mother, see *Vaidyanatha Aiyar v. Aiyasami Aiyar* (1908), 32 Mad. 191. In a suit for partition brought by a Hindu against his father and brothers, the brothers (but not the children of brothers) are entitled to have set apart from the family property a sum sufficient to defray

Each member of the coparcenary is obliged to bring into hotchpot, and submit to partition any coparcenary property, or property acquired from coparcenary funds which may be in his hands.¹

He is not required to account for money which has been received by him for his expenses.²

Where a single coparcener has purported to deal with a defined portion of the family property as if it were his own, it may be equitable to allot such portion to the purchaser if possible.³ Where he has dealt with a share in a defined portion, it may be equitable on partition to allot him a share in such portion. If such course be not equitable or practicable, the alienee would only have a right of compensation against the alienor personally.⁴

Where a coparcener has, by arrangement or without objection, occupied a particular portion of the family property, or where he has laid out his separate money on a certain portion of the property, it may be equitable to allot to him the portion occupied, or improved by him, provided that he does not thereby get more than his share.

In one case,⁵ where a coparcener built with his separate money a house upon ground belonging to the family, the Court held that each of the coparceners was entitled to a share in the house and the site upon which it was built, equal in value to his share of the site.

How partition
made by
Court.

When the property is partible and capable of partition, the Court will ordinarily order a partition by metes and bounds.

Partition Act,
1893.

The following provisions of the Partition Act, 1893,⁶ apply to all partitions by the Court, but do not affect any local law providing for the partition of immovable property paying revenue to Government.

Power to
Court to
order sale
instead of
division in
partitionsuits.

Sec. 2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the

the expenses of their prospective thread, betrothal, and marriage ceremonies, such sum to be calculated according to the extent of the family property, *Jairam v. Nathu* (1906), 31 Bom. 54; 8 Bom. L. R. 632.

¹ *Lakshman Dada Naik v. Ramchandra Dada Naik* (1876), 1 Bom. 561. See ante, p. 237.

² *Ibid.*, *Konerrav v. Gurrav* (1881), 5 Bom. 589, at p. 595.

³ *Pandurang Anandrav v. Bhaskar*

Shadashiv (1874), 11 Bom. H. C. 72; *Udaram Sitaram v. Ranu Panduji* (1875), 11 Bom. H. C. 76; *Narayan v. Gumnaji* (1903), 5 Bom. L. R. 945.

⁴ *Aiyyagari Venkataramayya v. Aiyyagari Ramayya* (1902), 25 Mad. 690, at pp. 718, 719.

⁵ *Vithoba Bava v. Hariba Bava* (1869), 6 Bom. H. C. A. C. 54.

⁶ Act IV. of 1893.

property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.¹

Sec. 3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

Procedure when sharer undertakes to buy.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Sec. 4. (1) Where a share of a dwelling-house belonging to an undivided family² has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

Partition suit by transferee of share in dwelling-house.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

5. In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorized to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Representation of parties under disability.

6. (1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

Reserved bidding and bidding of shareholders.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the

¹ *Hirakore (Bai) v. Trikamdas* the right, *Vaman Vishnu Gokhale v. Vasudev Morbhat Kale* (1898), 23 (1907), 4 Bom. 103.

² Ownership, not occupation, gives Bom. 73.

property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

Procedure to be followed in case of sales.

7. Save as heretofore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely :—

- (a) if the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay in the exercise of its original jurisdiction, or of the Court of the Recorder of Rangoon,¹ the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar ;
- (b) if the property be sold under a decree or order of any other Court, such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules are made the procedure prescribed in the Code of Civil Procedure² in respect of sales in execution of decrees.

8. Any order for sale made by the Court under section 2, 3, or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.³

Saving of power to order partly partition and partly sale.

9. In any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

Application of Act to pending suits.

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

Partition of revenue-paying estate.

A Civil Court can make a decree for a partition of an estate paying revenue to Government, but cannot carry out its decree.⁴ If the decree be for the partition, or for the separate possession of a share of an undivided estate assessed as such to the payment of undivided revenue to Government,⁵ the partition of the estate or the separation of the share shall be made by the Collector according to the law, if any, for the time being in force for the partition, or the separate possession of such estate.⁶

The Civil Court may carry out the decree if no separate allotment of the revenue be asked for.⁶

¹ This now would be the Chief Court of Lower Burmah in the exercise of its original civil jurisdiction. See Act VI. of 1900.

² Act V. of 1908.

³ *Meherban Rawool v. Behari Lal Barik* (1896), 23 Calo. 679; *Dattatraya Vitthal v. Mahadaji Parashram* (1891), 18 Bom. 528; *Ramjoy Ghose v. Ramrunjun Chuckerbutti* (1881), 8 C. L. R. 367; *Parbhudas Lakhmadas v. Shankarabhai* (1886), 11 Bom. 662; *Chundernath Nundi v. Hur Narain*

Deb (1881), 7 Calo. 153.

⁴ This does not include a ryotwari estate in Madras, *Muttuchidambawa v. Karuppa* (1884), 7 Mad. 382, or a share of a certain defined portion of a mahal, *Ram Dayal v. Megu Lal* (1884), 6 All. 452.

⁵ Civil Procedure Code (Act V. of 1908), s. 54.

⁶ *Jogodishury Debes v. Kailash Chundra Lahry* (1897), 24 Calo. 725; 1 C. W. N. 374.

No Civil Court, except the Bombay High Court, can entertain a suit or an application for the partition of a Gujerat taluqdari estate.¹

The law relating to the partition of revenue-paying estates is to be found in the following enactments:—

Partition by
Revenue
authorities.

For Ajmere.—Reg. II. of 1877.

For Bengal.—Regulations VIII. of 1793 and VII. of 1822; Act V. (Ben. C.) of 1897.²

For Madras.—Mad. Reg. II. of 1803.

For Assam.—Reg. I. of 1886, ss. 96–121, 154.

For Bombay.—Act X. of 1876; Act V. (Bom. C.) of 1879, ss. 113, 114; Act VI (Bom. C.) of 1888.

For the Central Provinces.—Act XVIII. of 1881, s. 136, as amended by Act XVI. of 1889, s. 26.

For the United Provinces.—Act III. (N. W. P. C.) of 1901, ss. 105–140, 203.³

For the Punjab.—Act XVII. of 1887, ss. 112–135, 158.

Partition does not annul the filial relation nor subject to the preference of an undivided son⁴ or brother,⁵ the right of inheritance incidental to such relation.⁶

Effect of
partition.

REUNION.

The parties to a partition,⁷ or some of them,⁸ may reunite so as to constitute, after such reunion, a joint family, and to remit them to the same status as before the partition.⁹

Reunion.

There must be a complete junction of estate with an intention to reunite, and not a mere living together,¹⁰ or joint enjoyment of the property.¹¹

¹ Act VI. (Bo. C.) of 1888, s. 21

² See *Tajamal Ali v. Musnud Ali* (1910), 14 C. W. N. 632.

³ See *Jagan Nath v. Turben Sahi* (1908), 31 All. 41.

⁴ *Post*, pp. 365, 366.

⁵ *Post*, p. 375.

⁶ *Marudayi v. Dorasami Karaybian* (1907), 30 Mad. 348; *Ramappa Nascken v. Sithammal* (1879), 2 Mad. 182.

⁷ *Balabux Ladhuram v. Rukhmabai* (1903), 30 I. A. 130, at p. 136; 30 Calc. 725, at p. 734; 7 C. W. N. 642, at p. 646; 5 Bom. L. R. 469; *Pran Kishen Paul Chowdry v. Mothooramohun Paul Chowdry* (1865), 10 M. I. A. 403; 4 W. R. P. C. 11; *Vishvanath Gangadhar v. Krishnaji Gangadhar* (1866), 3 Bom. H. C. A. C. 69. See *Lakshminbai v. Ganpat Moroba* (1867), 4 Bom. H. C. O. C. 160, at pp. 165, 166. Persons who have never been joint

cannot "reunite," *Akshay Chandra Bhattacharya v. Hari Das Goswami* (1908), 35 Calc. 721; 12 C. W. N. 511.

⁸ See *Abhai Churn Jana v. Mangal Jana* (1892), 19 Calc. 634; *Tara Chand Ghose v. Pudum Lochun Ghose* (1866), 5 W. R. C. R. 249.

⁹ They will succeed by survivorship, *Narasimha Charlu v. Venkata Singaramma* (1909), 33 Mad. 165. See, however, Mayne's "Hindu Law," 7th ed., pp. 797, 798. As to the law of inheritance, see *post*, pp. 398, 399.

¹⁰ *Rusi Mendli v. Sundar Mendli* (1910), 37 Calc. 703; *Gopal Chunder Daghorai v. Kenaram Daghorai* (1867), 7 W. R. C. R. 35; *Kuta Bully Viraya v. Kuta Chudappavuthamulu* (1864), 2 Mad. H. C. 235.

¹¹ See *Balkishen Das v. Ramnarain Sahu* (1903), 30 I. A. 139; 30 Calc. 738; 7 C. W. N. 578; 5 Bom. L. R. 461.

Where any of their descendants think fit to unite, they may do so; but such a union is not a reunion in the sense of the Hindu law, and does not affect the inheritance.¹

According to the Mitakshara,² reunion is restricted to three classes of cases, namely, (1) between father and son, (2) between brothers, (3) between paternal uncle and nephews.³ The same view is taken in the Smriti Chandrika,⁴ the Daya-bhaga,⁵ the Viramitrodaya,⁶ and the Mayukha.⁷ The Mithila school permits any of the late co-sharers to reunite.⁸

An agreement to reunite cannot apparently be made by, or on behalf of, a minor.⁹

The burden of proof of reunion is on the person alleging it.¹⁰

¹ *Vishvanath Gangadhar v. Krishnaji Gangadhar* (1866), 3 Bom. H. C. A. C. 69. See *Krodesch Sen v. Kamini Mohun Sen* (1881), 10 C. L. R. 161; *Ram Hari Sarma v. Trihi Ram Sarma* (1871), 7 B. L. R. 336; 15 W. R. C. R. 442.

² Chap. II. s. 9, paras. 2, 3

³ *Basanta Kumar Singha v. Jogen-dra Nath Singha* (1905), 33 Calc. 371; 10 C. W. N. 236.

⁴ Chap. XII. para. 1. *Abhai Churn Jana v. Mangal Jana* (1892), 19 Calc. 634, at p. 638

⁵ Chap. XII. paras. 3, 4. See also

"Daya-Karma-Sangraha," chap. v. para. 4.

⁶ G. C. Sircar's translation, pp. 168, 169, 205.

⁷ Chap. IV. s. 19, para. 1.

⁸ "Vivada Chintamani" (P. C. Tagore's translation), p. 301; "Daya-Krama-Sangraha," chap. v. para. 5.

⁹ *Balabux Ladhuram v. Rukmabai* (1903), 30 I. A. 130, at p. 136; 30 Calc. 725, at pp. 734, 735; 7 C. W. N. 642, at p. 646; 5 Bom. L. R. 469.

¹⁰ *Gopal Chunder Daghoria v. Kenaram Daghoria* (1867), 7 W. R. C. R. 35.

CHAPTER X.

PRINCIPLES OF INHERITANCE.

THE Law of Inheritance is the law as to the devolution of Definition.
property on the death of an absolute owner intestate.

There is old authority that when a Hindu relinquishes all worldly Abandon-
affairs, his heir takes his property.¹ In the unlikely event of such a ment of
question arising it would have to be shown clearly that there was a formal worldly
and conclusive abandonment of all interests in property. affairs.

Under the Bengal school of law all the property of which To what
a Hindu dies possessed, whether it be separate or coparcenary, property
passes to his heir, if he has made no valid bequest thereof.² inheritance
applies.

Under the Mitakshara law the heir is entitled only to—

- (a) The separate acquisitions of a deceased member of a coparcenary.³
- (b) Property which had belonged to a coparcenary of which the deceased was the sole surviving member.⁴
- (c) The property, however acquired, of a deceased Hindu, who was at the time of his death separate from the other members of his family.⁵

¹ Strange's "Hindu Law," vol. ii. p. 185; Colebrooke's "Digest," vol. ii. pp. 525, 536; "Daya-Bhaga," chap. ii. para. 57. See *Hafzoonnissa Begum v. Radhabinode Musur*, Ben. S. D. A. 1856, p. 595; *Siddh Naraen v. Futeh Naraen* (1805), 1 Ben. Sel. R. 118 (new edition, 156); *Jagannath Pal v. Budyand* (1868), 1 B. L. R. 114; 10 W. R. O. R. 172; *Dharmapuram Pandara Sannadhi v. Vvrapandiyam Pillai* (1898), 22 Mad. 302.

² *Durga Nath Pramanik v. Chintamani Dassi* (1903), 31 Calc. 214; 8 C. W. N. 11.

³ *Katama Natchiar v. The Rajah of Shwagunga* (1864), 9 M. I. A. 543; 2 W. R. P. C. 31; *Periasami v. Periasami* (1878), 5 I. A. 61; 1 Mad. 312; 2 C. L. R. 81; *Putum Koonwar (Musst.) v. Joy Krishen Doss* (1866), 6 W. R. C. R. 101.

⁴ *Ante*, pp. 213, 214.

⁵ *Doorga Persad Singh (Tekast) v. Doorga Konwar (Tekast)* (1878), 5 I. A. 149, at p. 160; 4 Calc. 190, at p. 202. 3 C. L. R. 31, at p. 40; *Soorjoon (Musumat) v. Ishree Brahmun* (1871), 3 N. W. P. 74.

No question of inheritance to coparcenary property governed by the Mitakshara school of law can arise when there is a surviving coparcener, however remotely connected with the deceased.¹

As to the devolution of coparcenary property, see *ante*, pp. 228, 229.

As to the devolution of the separate property of a member of a *tarwad*, see *Govindan Nair v. Sankaran Nair* (1909), 32 Mad. 351.

Property
vested in
deceased.

In the absence of a valid bequest an heir is entitled to succeed to all property, which was vested in the deceased in title or in possession at the time of his death, although the enjoyment of the deceased therein may have been postponed.²

He is not entitled to succeed to property which was not so vested.³

Vesting of
inheritance.

The right of the nearest heir to inherit vests at the moment of the death of the owner of the property, or of a female heir taking a restricted estate.⁴ It cannot under any circumstances remain in abeyance in expectation of the birth of a preferable heir not conceived at the time of the owner's death.⁵

The question in each case is who is the nearest heir when the succession opens out, i.e. on the death of the propositus or on the death of a woman who does not make a fresh stock of descent.

A person who is born between the date of the death of a full owner and the death of a female limited owner will take if he is at the latter date the nearest heir of the last full owner.⁶

It is not obligatory on a Hindu heir to obtain letters of administration to the estate of the last owner.⁷

Devesting of
inheritance.

The right can only be divested by the valid adoption of a son to the late owner,⁸ or by the birth of a child who was

¹ *Ante*, p. 229.

² *Rewun Persad v. Radha Beeby* (*Museumat*) (1846), 4 M. I. A. 137, at p. 176; 7 W. R. P. C. 35, at p. 40; *Hurrosoondery Deba Chowdranee v. Rajessuree Dabea* (1865), 2 W. R. C. R. 321.

³ *Balamma v. Pullayya* (1894), 18 Mad. 168.

⁴ *Post*, Chap. XV.

⁵ *Nilcomul Lahuri v. Jotendro Mohun Lahuri* (1881), 7 Calc. 178, at p. 186; 8 C. L. R. 401, at p. 404; *Koylasmath Doss v. Gyamonee Dossee*, W. R. 1864, C. R. 314; *Rash Beharee Roy v. Nimaye Churn*, *Ibid.* 223; *Kerub Chunder Ghose v. Bishnopur-*

saud Bose, Ben. S. D. A. 1860, vol. ii. 340; *Gordhandas v. Ramcoover* (*Bai*) (1901), 26 Bom. 449; 3 Bom. L. R. 857; *Lakhi Priya v. Bhairab Chandra Chaudhuri* (1833), 5 Ben. Sel. R. 315 (new edition), 369; *Banymodhi Ghose v. Juggodumba Dossee*, 2 Sev. App. C. 248; Norton L. C. 421.

⁶ *Seeta Ram Gossain v. Fukeer Chand Chuckerbutty* (1871), 15 W. R. C. R. 433.

⁷ *Jogendra Chunder Dutt v. Apurna Dass* (1908), 13 C. W. N. 1190; *Saboo Sidick (Haji) v. Ally Mahomed* (1904), 30 Bom. 270; 6 Bom. L. R. 1135.

⁸ See *ante*, pp. 187, 188, 192.

conceived at the time of his death¹ (or when the succession opened out),² and would have had a preferential right to the inheritance.³

There might also be a case where a testator had made a bequest to operate *in futuro*; then the estate of the heir would be divested on the bequest coming into operation.⁴

An estate once vested cannot be divested by the birth of a nearer heir, who was not conceived at the time the succession opened out, nor can it be partially divested by the birth of a person who would have been a co-heir if he had been born at the time when the inheritance vested.⁵

Illustration.

A Hindu died in 1832 leaving an only son who had been blind from his birth, and two widows the survivor of whom died in 1849. On the death of the surviving widow, the nephew succeeded as heir, the blind son being by Hindu law excluded from inheritance.⁶ The blind man, having married, a son was born to him in 1858. The blind man died in 1861. His son did not oust the nephew.⁷

An heir succeeds by virtue of his own right as the nearest heir, that is to say, by his own propinquity, or capacity to offer oblations as the case may be. He does not acquire his right through or under any other person.⁸

Right not acquired through others.

A person does not take because he was heir of a person who would have taken if he had survived the deceased.

"Heritable blood is a foreign importation from a foreign law, and grafting it upon the Hindu system can only lead to further confusion and inconsistency."⁹

¹ *Berogak Moye (Mt.) v. Nubokissen Roy*, 2 Sev. App. C. 239; Norton L. C. 422. This has no application to the case of a still-born child, *Goura Chowdhraïn (Mussamut) v. Chummun Chowdry*, W. R. 1864, C. R. 340, at p. 342.

² *Rash Beharee Roy v. Nimaye Churn*, W. R. (1864), C. R. 223.

³ Cases *ante*, p. 346, note 5, and *post*, p. 387, note 5. *Aulim Chund Dhur v. Bejaj Govind Burrall* (1838), 6 Ben. Sel. R. 224 (new ed., 278); *Bama Soonduree Dossee v. Anund Moyee Dossee* (1864), 1 W. R. C. R. 353; *Kalidas Das v. Krishan Chandra Das* (1869), 2 B. L. R. F. B. 103; 11 W. R. A. O. J. 11; cf. *Minakshi v. Virappa* (1884), 8 Mad. 89; *Yekeyamian v. Agniswarian* (1869), 4 Mad. H. C. 307, at p. 311; *Hanmant Ramchandra v. Bhimacharya* (1887), 12 Bom. 105; *Goura Chow-*

dhraïn (Mussamut) v. Chummun Chowdry, W. R. 1864, C. R. 340.

⁴ See *Bramamayi Das (Srimati) v. Jages Chandra Dutt* (1871), 8 B. L. R. 400, at p. 407.

⁵ *Narasimha Razu v. Veerabhadra Razu* (1893), 17 Mad. 287.

⁶ *Post*, pp. 354, 355.

⁷ *Kalidas Das v. Krishan Chandra Das* (1869), 2 B. L. R. F. B. 103; 11 W. R. A. O. J. 11; and see other cases, *post*, pp. 354, 355.

⁸ See *Brojo Mohun Thakoor v. Gourree Pershad Chowdhry* (1871), 15 W. R. C. R. 70; *Balamma v. Pullaya* (1894), 18 Mad. 168, at p. 170.

⁹ *Chelikani Tirupati Rayaningaru v. Suraneni Vencata Gopala Narasimha Rau Bahadur (Rajah)* (1871), 6 Mad. H. C. 278, at p. 287.

An heir is not disqualified because the person through whom he is related to the deceased cannot take. Thus a sister's son succeeds¹ although a sister cannot succeed. The same observations apply in the case of a mother's sister, a mother's father's sister, a brother's daughter, a father's brother's daughter, a father's sister, a father's father's brother's daughter, and a father's father's sister. If the sons of these persons predecease the owner, their sons, not being heirs, cannot take. Again, the son of a disqualified person may by virtue of his own heirship inherit,² although his father could not have taken.³

Illustrations.

(a) A son dies before his father, leaving a daughter. The daughter cannot succeed to her grandfather, although if her father had survived her grandfather, she would have inherited the property.⁴

(b) A niece does not take the property of her uncle, although her father, if he had been alive, would have inherited.

✓ Thus, except in some cases in the Bombay Presidency,⁵ a widow cannot, as such, inherit the property of any person other than her husband, *i.e.* no right accrues to her as widow to succeed to a person to whom her husband would have been an heir if he had lived.

The widow of a son,⁶ of a son's son,⁷ of a daughter's son,⁸ of a father,⁹ of a brother,¹⁰ of an uncle,¹¹ or of a cousin,¹² has no right of inheritance as such.

Post, pp. 387, 413.

Post, p. 357.

Post, pp. 354, 355.

Macnaghten's "Hindu Law,"
vol. ii. p. 176.

Post, pp. 396, 397.

Ananda Bibee v. Nownut Lal (1882), 9 Cal. 315; *Amrit (Bar) v. Mansik (Bar)* (1875), 12 Bom. H. C. 79; *Himulla Chowdrayn (Mussumaut) v. Pudoo Munee Chowdrayn (Mussumaut)* (1825), 4 Ben. Sel. R. 19 (new edition, 25); *Rai Sham Bullubh v. Prankishen Ghose* (1820), 3 Ben. Sel. R. 35 (new edition, 44); *Ayabutee (Mussumaut) v. Rajkishen Sahoo* (1820), *Ibid.* 28 (new edition, 38); Strange's "Hindu Law," vol. ii. pp. 233, 234.

⁷ *Goornee (Mussumat) v. Oomrao Koonwer (Mussumat)* (1866), 1 Agra H. C. 149.

⁸ W. Macnaghten's "Hindu Law,"

vol. ii. p. 47.

⁹ *Ramkoonwur v. Ummur* (1817), 1 Borr. 415; *Bhyrobee Dossee v. Nubkissen Bhose* (1836), 6 Ben. Sel. R. 53 (new edition, 61).

¹⁰ *Thayammal v. Annamalai Mudali* (1895), 19 Mad. 35; *Peddammattu Viramani v. Appu Rau* (1864), 2 Mad. H. C. 117; *Jogdamba Koer v. Secretary of State* (1889), 16 Cal. 367; *Chooru v. Busunttee (Mussumat)* (1866), 1 Agra H. C. 174; *Jymunee Dibrah (Mussumaut) v. Ramjoy Chowdree* (1824), 3 Ben. Sel. R. 289 (2nd ed., 385).

¹¹ *Gauri Sahai v. Rukko* (1880), 3 All. 45; *Upendra Mohan Tagore v. Thanda Dasi* (1869), 3 B. L. R. A. C. 349; 12 W. R. C. R. 263.

¹² *Soorendronath Roy v. Heeramonee Burmoneah (Mussumat)* (1868), 12 M. I. A. 81; 1 B. L. R. P. C. 26; 10 W. R. P. C. 35.

An heir cannot be excluded by a testator from inheritance Disinherison. otherwise than by a valid devise to some other person.¹

The course of inheritance prescribed by the Hindu law Alteration of course of inheritance. cannot be altered by a private arrangement,² or by will,³ but there is nothing to prevent persons, in whom interests have become vested by inheritance, making arrangements *inter se* as to their shares, or waiving their rights.⁴

On property descending to a male Hindu as heir, he becomes Heir becomes fresh stock of descent. a fresh stock of descent, and on his death the property passes to his heir and not to the heir of the previous owner.

When property descends to a female, she does not,⁵ except in some cases in Bombay,⁶ become a new stock of descent, but on her death the person, who would have been heir to the last full owner if he or she had been living at the death of the female, takes, and, if a male, becomes a new stock of descent.

Except in the case of the inheritance of a son, of a son's son, or of a son's son's son to the property of a male Hindu,⁷ in Nearer heir excludes more remote. which case the doctrine of representation excludes the rule of preference,⁸ the existence of a class of nearer heirs excludes all members of a more remote class.⁹

¹ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Supp. vol. 47, at p. 79; 3 B. L. R. 377, at pp. 409, 410; 18 W. R. C. P. 359, at p. 371; *Tooleeydas Ludha v. Premji Tricunddas* (1888), 13 Bom. 61, at p. 69.

² *Balkrishna Trimbak Tendulkar v. Savitribai* (1878), 3 Bom. 54; *Venkuta Mahapatra Surya Rao Bahadur (Sri Raja Rao) v. Venkata Mahapatra Gangadhara Rama Rao Bahadur (Hon. Sri Raja Rao)* (1886), 13 I. A. 97; 9 Mad. 499.

³ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Supp. vol. 47, at pp. 64, 65; 9 B. L. R. 377, at p. 394; 18 W. R. C. R. 359, at p. 364; *Tarakeswar Roy (Kumar) v. Shashi Shikareswar (Kumar)* (1883), 10 I. A. 51, at p. 58; 9 Calc. 952, at p. 958; 13 C. L. R. 62, at pp. 65, 66.

⁴ *Meherban Singh v. Sheo Koonwer (Mussumat)* (1866), 1 Agra, 106; *Dal Chund v. Soonder (Mussumat)* (1867), 2 Agra, 173.

⁵ *Post*, p. 448.

⁶ *Post*, p. 451.

⁷ *Post*, p. 369. As to illegitimate sons, see *post*, pp. 367, 368. As to *stridhan* property, see *post*, p. 433.

⁸ *Muttuvaduganatha Tevar v. Periasami* (1892), 16 Mad. 11, at p. 15; *Marudayi v. Doraisami Karambian* (1907), 30 Mad. 348, at p. 351.

⁹ *Chandika Baksh v. Muna Kuar* (1902), 29 I. A. 70; 24 All. 273; 6 C. W. N. 425; 4 Bom. L. R. 376; *Krishna Ayyangar v. Venkatarama Ayyangar* (1905), 29 Mad. 115; *Mahabeer Pershad v. Ram Surun* (1896), 3 Agra, 6; *Khettur Gopal Chatterjee v. Poorno Chunder Chatterjee* (1871), 15 W. R. C. R. 482.

For example, a brother's son cannot succeed while there is in existence a brother capable of taking.¹

The Hindu treatises on the law of inheritance among sons and grandsons proceed on the assumption of a partition made immediately after the death of the "propositus."²

Rights of
women.

The rights of women to inherit property are on a different footing from that of males.

Under the Bengal,³ Benares,⁴ and Madras⁵ schools, women inherit only by virtue of express texts, but in Madras certain female heirs are entitled to succeed in default of all male heirs.⁶

The Crown succeeds by escheat in preference to a woman who is not so named.⁷

Although women may not be heirs, their sons may be heirs on their own merits and not through their mothers.⁸ Thus the sister's son,⁹ the son of an uncle's daughter, the son of a brother's daughter, the son of a nephew's daughter, a son's daughter's son,¹⁰ or a daughter's daughter's son,¹¹ are heirs, although their mothers are not heirs.

In the Bombay Presidency widows of male relatives and

¹ *Rooder Chunder Chowdhry v. Sumbhoo Chunder Chowdhry* (1821), 3 Ben. Sel. R. 106 (new edition, 142); *Jymunee Dibrah (Mussumaut) v. Ramjoy Chowdree* (1824), *Ibid.* 289 (new edition, 385); *Prithoe Singh v. Court of Wards* (1875), 23 W. R. C. R. 272; S. C. on appeal, *Sheo Scondary v. Prithoe Singh* (1877), 4 I. A. 147.

² West and Buhler, 3rd ed., 68; *Marudayi v. Doraisami Karambian* (1907), 30 Mad. 348, at p. 350.

³ *Lulloobhoy Bappooobhoy v. Cassiba* (1880), 7 I. A. 212, at p. 231; 5 Bom. 110, at p. 118; S. C. in Court below, *Lallubhai Bapubhai v. Mankuwarbhai* (1876), 2 Bom. 388, at pp. 418, 428, 438; *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 37; 13 W. R. F. B. R. 49, at p. 58; "Daya-Bhaga," chap. xi. s. vi. para. 11.

⁴ *Nanhi v. Gauri Shankar* (1905), 28 All. 187; *Jagannath v. Champa* (1905), 28 All. 307, dissenting from *Bansidhar v. Ganeshi* (1900), 22 All. 338; *Gauri Sahai v. Rukto* (1880),

3 All. 45; *Jagatnaram v. Sheo Das* (1883), 5 All. 311; see *Ananda Bibee v. Nownst Lal* (1882), 9 Calc. 315.

⁵ *Lulloobhoy Bappooobhoy v. Cassiba* (1880), 7 I. A. 212, at p. 231; 5 Bom. 110, at p. 118; S. C. in Court below, *Lallubhai Bapubhai v. Mankuwarbhai* (1876), 2 Bom. 388, at pp. 418, 428, 438, *Mari v. Chinnammal* (1884), 8 Mad. 107, at pp. 117, 127, 129. See *Lakshmanammal v. Tiruvengada* (1882), 5 Mad. 241, at p. 249.

⁶ *Post*, pp. 397, 398.

⁷ *Jogdamba Koer v. Secretary of State* (1889), 16 Calc. 367; see *post*, pp. 400, 401.

⁸ See *ante*, p. 347.

⁹ *Post*, pp. 387, 413. See *Chelikani Tirupati Rayaningaru v. Venkata Gopala Narasimha Rau Bahadur (Rajah Suraneni)* (1871), 6 Mad. H. C. 278, at p. 288.

¹⁰ *Nanhi v. Gauri Shankar* (1905), 28 All. 187; *Koomud Chunder Roy v. Seetakanth Roy*, W. R. F. B. R. 75.

¹¹ *Jagannath v. Champa* (1905), 28 All. 307.

certain female relatives, who are excluded in the other Presidencies, are entitled to inherit.¹

"The principle of the general incapacity of women for inheritance . . . has not been adopted in Western India, where, for example, sisters are competent to inherit."²

Except in certain cases in the Bombay Presidency,³ on the death of a female in whom the inheritance has vested, the then next heir to the last full owner takes the estate, *i.e.* the property descends to those who would have been the heirs of the last full owner if he (or she in the case of *stridhan*) had lived up to and died at the moment of the death of such female owner.⁴ Succession after female.

As to the estate taken by a female in inherited property and her power over such property, see *post*, Chap. XV.

In the case of the male agnate descendants of a deceased male Hindu,⁵ and in the case of the succession of the sons of daughters in cases governed by the "*Mayukha*,"⁶ and in the distribution of *stridhan* property among sons' sons and among daughters' sons,⁷ the heirs take *per stirpes*. Succession when per stirpes.

In other cases persons of the same relationship to the deceased take *per capita*, *i.e.* each sharer takes an equal share independently of the stock from which he came. Succession when per capita.

This follows from the rule that there is no representation in inheritance.⁸ Thus brothers' sons⁹ and daughters' sons¹⁰ succeed *per capita*.

¹ *Post*, pp. 394-397.

² *Lulloobhoy, Bappoobhoy v Cassibai* (1890), 7 I. A. 212, at p. 231; 5 Bom. 110, at p. 118.

³ *Post*, p. 451.

⁴ *Post*, p. 448.

⁵ "*Mitakshara*," chap. i. s. v. paras. 1, 2; "*Daya-Bhaga*," chap. iii. s. 1, para. 21; "*Smṛiti Chandrika*," chap. viii. paras. 1, 2.

⁶ "*Vyavahara Mayukha*," chap. iv. s. x. para. 20.

⁷ "*Mitakshara*," chap. ii. s. xii. para. 16; "*Vyavahara Mayukha*," chap. iv. s. x. para. 21; "*Smṛiti Chandrika*," chap. ix. s. iii. para. 25; Banerjee's "*Law of Marriage*," 2nd ed., pp. 399, 410.

⁸ *Ante*, p. 347.

⁹ *Brojo Kishoree Dassee v Sreenath Bose* (1868), 9 W. R. C. R. 463; *Brojo Mohun Thakoor v Gouree Pershad Chowdhry* (1871), 15 W. R. C. R. 70; *Gooroo Churn Sircar v Koylash Chunder Sircar* (1866), 6 W. R. C. R. 93; *Rutton Kristo Bosoo v Bhugoban Chunder Bosoo* (1872), 18 W. R. C. R. 32; R. K. Sarvadikari's "*Hindu Law of Inheritance*," p. 483.

¹⁰ (*Mitakshara School*) *Nagesh v. Gururao* (1892), 17 Bom. 303; *Ram Swaruth Pandey v. Basdeo Singh (Baboo)* (1867), 2 Agra, 168. *Sheo Sehai Singh v. Omed Konwur (Mussummat)* (1840), 6 Ben. Sel. R. 301 (2nd ed., 378) (*Bengal School*) *Ramdhun Sein v. Kishen Kanth Sein* (1821), 3 Ben. Sel. R. 100 (new edition, 133).

"There is no positive reason in favour of applying the rule of succession *per stirpes* to the case of the remote *gotraja sapindas*, while there are certain important considerations pointing the other way. . . . As regards daughters' sons, it has always been held that they succeed not *per stirpes* but *per capita*. . . . So in the case of brothers' sons the same rule has been laid down. In both cases the succession is direct, the nephews being entitled to claim as nephews, and being liable to be excluded by any uncle or aunt, as the case may be, if one happens to survive the propositus. The similarity between the succession of these nephews with that of the remoter *gotraja sapindas* is more complete than that between the succession of the latter, and that of lineal descendants."¹

Relinquish-
ment of heir-
ship.

There is apparently no objection to an heir, either under the Mitakshara² or the Bengal law³ relinquishing his rights of inheritance in favour of the next heir.

This applies also to the case of an impartible Raj.⁴

EXCLUSION FROM INHERITANCE.

Unchaste
widow.

An unchaste widow is not entitled to succeed to the property of her husband,⁵ but where before the loss of chastity the property has vested in her,⁶ although she may not have acquired possession thereof,⁷ her rights therein are not divested by the subsequent loss of chastity.

Unchastity which has been condoned by the husband is not a bar.⁸

¹ *Nagesh v. Gururao* (1892), 17 Bom. 303; *Ramguitty Doss v. Nundo Koomar Doss* (1865), 2 W. R. C. R. 11. "Partition is equal in the absence of special texts to the contrary," Bhattacharya's "Hindu Law," 2nd ed., p. 442.

² "Mitakshara," chap. i. s. ii. para. 11; *Ruvee Bhudr Sheo Bhudr v. Roopshunkur Shunkerjee* (1823), 2 Borr. 656, at p. 665. See *Meherban Singh v. Sheo Koonwer (Mussumat)* (1866), 1 Agra, 106; *ante*, pp. 223, 224.

³ *Rujoneekant Mitter v. Premchand Bose* (1862), Marsh, 241. See *Ram Kannye Gossamee v. Meernomoyee Dossee* (1865), 2 W. R. C. R. 49.

⁴ *Luchmeenarain Singh v. Gibbon* (1870), 14 W. R. C. R. 197.

⁵ "Mitakshara," chap. ii. s. i. paras. 37-39, s. ii. para. 2; *Kery Kohitany*

v. Moneeram Kohla (1873), 13 B. L. R. 1, at pp. 11, 12; 19 W. R. C. R. 367, at p. 371; "Vyavahara Mayukha," chap. iv. s. viii. paras. 2, 6, 8, 9; "Daya-Bhaga," chap. xi. s. i. para. 56. See *Rajkoonwaree Dassee v. Golabee Dassee*, Ben. S. D. A. 1858, p. 1891. As to her right of maintenance, see *ante*, p. 79.

⁶ *Moniram Kohla v. Kerry Kohitany* (1880), 7 I. A. 115; 5 Calc. 776; 6 C. L. R. 322 S. C. (in court below) (1873), 13 B. L. R. I.; 19 W. R. C. R. 367; *Parvati v. Bhikku* (1867), 4 Bom. H. C. A. C. 25; *Nehalo v. Kishen Lal* (1879), 2 All. 150; *Sellam v. Chinnammal* (1901), 24 Mad. 441.

⁷ *Bhavani v. Mahab Kuar* (1879), 2 All. 171.

⁸ *Gangadhar v. Yellu* (1911), 36 Bom. 138; 13 Bom. L. R. 1038.

In parts of India governed by the Mitakshara law a widow is the only female heir, at any rate in Bombay and Madras, who is excluded by unchastity from inheritance to a male Hindu.¹ Other unchaste heirs.

The "Smrita Chandrika,"² which is of great authority in Madras,³ and the "Viramitrodaya,"⁴ which is of authority in the Benares school,⁵ make chastity a condition for inheritance, but the "Mitakshara" and the "Mayukha" omit to impose upon a daughter the condition of being chaste.⁶ The law is thus clear in Bombay, and in Madras the question is covered by the decision in *Kojiyadu v. Lakshmi*.⁷ There is no authority elsewhere, but it is submitted that the omission of this condition from the "Mitakshara" decides the question.

According to the Bengal school, in addition to the widow any other female heir to a male is excluded by her unchastity⁸ antecedent to the vesting.

Unchastity is not a bar to inheriting *stridhan* property.⁹ Stridhan.

Act XV. of 1856, which empowers Hindu widows to remarry, provides as follows— Forfeiture of property by remarriage.

Sec. 2. "All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors,¹⁰ or by virtue of any will or testamentary disposition conferring

¹ (As to daughter) *Tara v. Krishna* (1907), 231 Bom. 495, at p. 502; 9 Bom. L. R. 774; *Adivyapa v. Rudrava* (1879), 4 Bom. 104; *Kojiyadu v. Lakshmi* (1882), 5 Mad. 149, at p. 155; *Vedammal v. Vedanayaga Mudaliar* (1907), 31 Mad. 100; *Angammal v. Venkata Reddy* (1902), 26 Mad. 509, at p. 511; *Ganga Jati (Musammat) v. Ghasia* (1875), 1 All. 46; *Deokee (Musummat), v. Sookhdeo* (1870), 2 N. W. P. 361. (As to a mother) *Dal Singh v. Dini (Musammat)* (1909), 32 All. 155; *Kojiyadu v. Lakshmi* (1882), 5 Mad. 149; *Baldeo Singh v. Mathura Kunwar* (1911), 33 All. 702.

² Chap. xi. s. ii. para. 26.

³ *Ante*, p. 14.

⁴ Chap. iii. pt. ii. s. 3.

⁵ *Ante*, p. 14.

⁶ See *Adivyapa v. Rudrava* (1879), 4 Bom. 104, at pp. 110, 111.

⁷ (1882), 5 Mad. 149.

⁸ Raghunandan's commentary on H.L.

"Daya-Bhaga," chap. xi. s. ii. para. 31, referred to in *Ramnath Tolapattro v. Durga Sundari Devi* (1878), 4 Calc. 550, at p. 554; *Sundari Letani v. Pitambari Letani* (1905), 32 Calc. 871; 9 C. W. N. 1003; *Ramananda v. Raikishori Barman* (1894), 22 Calc. 347; *Ramnath Tolapattro v. Durga Sundari Devi* (1878), 4 Calc. 550; *Kery Kolitany v. Monecran Kolita* (1873), 13 B. L. R. 1, at p. 48; 19 W. R. C. R. 367, at p. 393.

⁹ *Ganga Jati (Musammat) v. Ghasia* (1878), 1 All. 46; *Nogenndra Nandini Dass v. Benoy Krishna Deb* (1902), 30 Calc. 521; 7 C. W. N. 121; *Angammal v. Venkata Reddy* (1902), 26 Mad. 509. Sastri G. C. Sircar disputes this ("Hindu Law," 3rd ed., p. 333).

¹⁰ Thus she forfeits property inherited from a son; *Vithu v. Govinda* (1896), 22 Bom. 321.

upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall, upon her remarriage, cease and determine, as if she had then died, and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same."

Remarriage of widow This applies whether or not she has before such remarriage abandoned Hinduism¹

A widow does not by remarriage lose her rights to succeed thereafter to her son or other lineal successor of her husband²

There is a conflict of opinion as to whether widows, who are by the custom of their caste entitled to remarry, lose their interests in the property of their husbands by remarriage. The Allahabad High Court³ considers that they do not, but the High Courts at Calcutta,⁴ Madras,⁵ and Bombay⁶ have taken the opposite view.

She has the same rights of inheritance to her new husband as she would have had, had such marriage been her first marriage.⁷

Physical defects

Certain physical defects exclude from inheritance and coparcenary,⁸ viz. impotence,⁹ idiocy,¹⁰ congenital blindness,¹¹

¹ *Mutungini Gupta v Ram Rutton Roy* (1891) 19 Cal 289, overruling *Gopal Singh v Dhungu* (1865), 3 W R C R 206

² *Akora Suth v Borani* (1868), 2 B L R 199, 11 W R C R 82, *Basappa v Rayappa* (1904) 29 Bom 91, 6 Bom L R 779, *Haru Dalmel (Chaman) v Kashi* (1902) 26 Bom 388, 4 Bom L R 737, *Lakshmana Sasamallo v Siva Sasa mallayani* (1905) 28 Mad 425

³ *Khuddo v Durga Prasad* (1906), 20 All 122, *Har Saran Das v Nandi* (1889), 11 All 330, *Kanjit v Rudha Rani* (1898), 20 All 476, *Gajadhar v Kainsulla* (1908), 31 All 161. These decisions were accepted with hesitation in *Mula v Putab* (1910), 32 All 489

⁴ *Rasul Jehan Begum v Ram Surun Singh* (1895), 22 Cal 589, *Gourchurn Patni v Sita Patni* (1909), 14 C W N 348

⁵ *Murugay v Ramakali* (1877), 1 Mad 226

⁶ *Vithu v Govinda* (1896), 22 Bom 321

⁷ Act XV of 1856, sec 5

⁸ See ante, p 222

⁹ "Daya Bhaga," chap v paras

7, 8, *Viramitrodaya*, chap viii. The *Mitakshara* (chap ii s 10, para 2) describes an impotent person as one of the third sex, but in *Bala abhata*, the author (Lakshmi Devi) includes a male eunuch, so, according to her, impotence need not be congenital. The *Viramitrodaya* takes a different view, but the *Mitakshara* (chap ii s 10 para 3) includes persons who have become impotent. *Manu*, chap ix para 201, excludes eunuchs, so apparently non congenital impotence will be a ground of exclusion. Except in the cases of hermaphrodites and eunuchs, impotence, so as to exclude from inheritance, is very difficult to prove. See Bhattacharya's "Law of Joint Family," pp 405, 406

¹⁰ *I*e of unsound and imbecile mind. See *Tirumamagal Ammal v Ramaswami Ayyangar* (1863), 1 Mad H C 214. The *Mitakshara* (chap ii s 10, para 2) defines an idiot as a "person deprived of the internal faculty, meaning one incapable of discriminating right from wrong."

¹¹ *Murari Gokuldas v Parvatibai* (1876), 1 Bom 177. See *Bakubai v. Manchhabai* (1864), 2 Bom H C.

deafness or dumbness,¹ absence of a limb or sense,² lameness, *i.e.* complete incapacity to walk,³ lunacy,⁴ although not congenital⁵ or incurable.⁶

If the interest be vested by birth, it cannot be divested by subsequent lunacy⁷; nor can it be divested by lunacy commencing after the succession has opened out.⁸

The rule of Hindu law which disqualifies "idiots" and "madmen" from inheritance, should be enforced only upon the most clear and satisfactory proof, that its requirements are satisfied. The rule does not contemplate the disqualification of persons who are merely of weak intellect in the sense that they are not up to the average standard of human intelligence, or endowed with the business capacity to manage their affairs properly.⁹

5. Blindness, even if incurable, is not, if it is not congenital, a ground of exclusion; *Umabai v. Bhavu Padmanji* (1877), 1 Bom. 557; *Mohesh Chunder Roy v. Chunder Mohun Roy* (1874), 14 B. L. R. 273; 23 W. R. C. R. 78; *Kalidas Das v. Krishan Chandra Das* (1869), 2 B. L. R. F. B. 103; 11 W. R. A. O. J. 11. See Bhattacharya's "Law of the Joint Family," p. 419.

¹ *Muddun Gopal Lal (Lalu) v. Khikinda Koer (Mussumat)* (1890), 18 I. A. 9; 18 Calc. 341; *Hira Singh (Chaudhri) v. Gunga Sahai (Chaudhri)* (1883), 11 I. A. 20; 6 All. 322; *Vallabhram Shrinwarayan v. Hariganga (Bai)* (1867), 4 Bom. H. C. A. C. 135; *Pareshmani Das v. Dinanath Das* (1868), 1 B. L. R. A. C. 117; 11 W. R. A. O. J. 19, note; *Balgovind Lal v. Rampertab Singh Ben. S. D. A.* 1860, vol. i. p. 661.

² "Mitakshara," chap. ii. s. 10; • "Daya-Bhaga," chap. v. s. 7. "Literally, an organ; explained by some as a sense, as that of smelling, or of sight, etc., but by others, as a limb, as the hand, foot, and so forth." Colebrooke's annotation to "Daya-Bhaga," chap. v. para. 7.

³ "Daya-Bhaga," chap. v. para. 10; Colebrooke's "Digest," vol. iii. p. 421. "There is no text which declares that lameness should be congenital," Bhattacharya's "Hindu Law," 2nd ed., p. 360, but in *Venkata Subba Rao v. Puroshottam* (1902), 26 Mad. 133, it was held

that lameness which was not congenital did not exclude. See *Futrick Chunder Chatterjee v. Juggut Mohun Dabec* (1874), 22 W. R. C. R. 348; Sircar's "Vyavastha Darpana," 2nd ed., p. 1005.

⁴ *Ram Soonder Roy v. Ram Sahye Bhugut* (1852), 8 Calc. 919.

⁵ *Ram Sahye Bhukut v. Lalji Sahye (Lalla)* (1881), 8 Calc. 119; 9 C. L. R. 457; *Dwarkanath Bysak v. Mahendranath Bysak* (1872), 9 N. L. R. 198; 18 W. R. C. R. 305; *Woomu Pershul Roy v. Gush Chunder Prochundo* (1884), 10 Calc. 639; *Deo Kishen v. Budh Prakash* (1883), 5 All. 509. See *Bodhnurain Singh (Baboo) v. Omrao Singh (Baboo)* (1870), 13 M. I. A. 519; 6 B. L. R. 509; 15 W. R. P. C. 1; *Goureenath v. Collector of Monghyr* (1867), 7 W. R. C. R. 5; *Murari Gokuldas v. Parvutibai* (1876), 1 Bom. 177, at p. 182.

⁶ *Dwarkanath Bysak v. Mahendranath Bysak* (1872), 9 B. L. R. 198; 18 W. R. C. R. 305; *Deo Kishen v. Budh Prakash* (1883), 5 All. 509.

⁷ *Tirbeni Sahai v. Muhammad Umar* (1905), 28 All. 247; *Braja Bhukan Lal Ahusti v. Buchan Dobi* (1870), 9 B. L. R. 204, note; 14 W. R. C. R. 329; *Sanku v. Puttanma* (1890), 14 Mad. 289.

⁸ *Dwarkanath Bysak v. Mahendranath Bysak* (1872), 9 B. L. R. 198; 18 W. R. C. R. 305; *Deo Kishen v. Budh Prakash* (1883), 5 All. 509.

⁹ *Surti v. Narain Das* (1890), 12 All. 530.

A physical defect, which would exclude a male from the inheritance, would also exclude a female.¹

The ancient text-books also exclude persons suffering from an incurable disease.² Under modern authorities, persons suffering from an aggravated and incurable form of leprosy are excluded,³ but persons suffering from the less aggravated forms of that disease are not excluded.⁴

Although there are no cases on the subject, there seems no reason why the text of the law should not be followed, and why, if it be clearly proved that a person is suffering from a serious and incurable disease such as cancer or phthisis he should not be excluded. In the case of the latter disease, as modern research has produced cures in cases which before were treated as incurable, it would be difficult to prove a case of exclusion. As to the former disease much might depend on the situation and stage of the disease.⁵

In ancient times there were many other grounds for exclusion from inheritance and partition, but as they were removable by expiation, it is said that the Courts would not apparently now give effect to them.⁶ There is, however, authority that expiation is necessary.⁷ For instance, "an enemy of his father" was excluded,⁸ but this portion of the law is now obsolete.⁹

Although "Manu" ¹⁰ treats fraud by one of the coparceners as operating as a forfeiture of his share, it seems clear that it has no such effect, but that

¹ See *Bakubai v. Manchabai* (1864), 2 Bom. H. C. 5.

² "Mitakshara," chap. ii. s. 10, in para. 2, "marasmus" (atrophy) is given as an example; Colebrooke's "Digest," vol. iii. p. 321.

³ *Ananta v. Ramabai* (1877), 1 Bom. 554; *Janardhan Pandurang v. Gopal* (1868), 5 Bom. H. C. A. C. J. 145; *Muttuvilaya v. Parasakti*, 1 Mad. S. D. A. 239; *Bhoobunessuree Debia v. Gouree Doss Turkopunchaun* (1869), 11 W. R. C. R. 535. See *Bhagaban Ramanuj Das (Mohunt) v. Roghunundun Ramanuj Das (Mohunt)* (1895), 22 I. A. 94; 22 Calc. 843; *Lakhi Priya v. Bhairab Chandra Chaudhuri* (1833), 5 Ben. Sel. R. 315 (2nd ed. 369); K. K. Bhattacharya's "Law of Joint Family," pp. 408, 409.

⁴ *Runchhod Naran v. Ajobbai* (1907), 9 Bom. L. R. 114.

⁵ K. K. Bhattacharya ("Law of Joint Family," pp. 407, 408) points

out the difficulty in holding that a disease is incurable. See *Issur Chunder Sein v. Ranees Dossee* (1865), 2 W. R. C. R. 125.

⁶ See Mayne's "Hindu Law," 7th ed., p. 803.

⁷ Sūcar's "Vyavastha Darpana," 2nd ed., pp. 1007, 1008. See, however, *Bhoobunessuree Debia v. Gouree Doss Turkopunchaun* (1869), 11 W. R. C. R. 535; *Bholanath Raee v. Sabitra (Mussummaut)* (1836), 6 Ben. Sel. R. 62 (new edition, 71); *Sheonauth Rai v. Dayamyee Chowdrain* (1814), 2 Ben. Sel. R. 108 (new edition, 137).

⁸ "Mitakshara," chap. ii. s. 10, para. 3. See *Jye Koonwur (Musst.) v. Bhikaree Singh*, Ben. S. D. A. 1848, p. 320; *Bholanath Raee v. Sabitra (Mussummaut)* (1836), 6 Ben. Sel. R. 62 (new edition, 71).

⁹ *Kalka Pershad v. Budree Sah* (1871), 3 N. W. P. H. C. 267.

¹⁰ Chap. ix. para. 213.

the defrauding coparcener is merely compelled to bring into partition the property of which he sought to defraud his coparceners.¹

The burden of proof is upon the person seeking to prove the disqualification.²

No one is entitled to take by inheritance the property of a person to whose murder he has been an accessory.³

Murder by
heir.

When an heir is disqualified, the next heir of the deceased succeeds, as if the disqualified person were dead.⁴

Result of dis-
qualification.

The son of a person excluded from inheritance can inherit if he is himself an heir, but he does not inherit as the son of his father.⁵

Illustration.

A. leaves a sister's son who is blind, and has a son B. B. cannot inherit.⁶

The wife or widow of a disqualified Hindu, in cases governed by the Bombay law, does not become incapable of inheriting property merely by reason of her husband's disqualification, whether she claims as heir to a deceased person through her husband or otherwise, if she be herself free from any of the defects which exclude a person from inheritance under the Hindu law.⁷

Wife of dis-
qualified
person in
Bombay.

There is nothing to prevent the widow of a disqualified person from inheriting as heir to her husband, or to her son.⁸

¹ *Kalka Pershad v. Budree Sah* (1871), 3 N. W. P. H. C. 267. See Colebrooke's "Digest," vol. ii. p. 564, vol. iii. p. 398; "Yajnavalkya," ii. para. 126; "Mitakshara," chap. i. s. 9; "Smriti Chandrika," chap. xiv. paras. 4-6; "Vyavahara Mayukha," chap. iv. s. 6, para. 3; Strange's "Hindu Law," vol. i. p. 232; Strange's "Manual," s. 273; West and Bühler's "Hindu Law," 2nd ed., pp. 307, 308; "Viramitrodaya" (Sircar's translation), p. 245; "Dayabhaga," chap. xiii. para. 2; "Daya-Krama-Sangraha," chap. viii.

² See *Ran Bijai Bahadur Singh (Dewan) v. Jagatpal Singh (Rae)* (1890), 17 I. A. 173; 18 Calc. 111.

³ *Vedammal v. Vedanayaga Mudaliar* (1907), 31 Mad. 100; *Vedanayaga Mudaliar v. Vedammal* (1904), 27 Mad. 591; *Gangu v. Chandrabhagabai* (1907), 32 Bom. 275; 12 Bom. L. R. 149. It may be an interesting question as to what is the effect upon

the right of survivorship in the case of the murder of one coparcener by another.

⁴ *Pareashmani Dasi v. Dinanath Das* (1868), 1 B. L. R. A. C. 117; 11 W. R. A. O. J. 19, note; *Bodhnarain Singh (Baboo) v. Omrao Singh (Baboo)* (1870), 13 M. I. A. 519; 6 B. L. R. 509; 15 W. R. P. C. 1, W. Macnaghten's "Hindu Law," vol. ii. p. 42.

⁵ *Pareashmani Dasi v. Dinanath Das* (1868), 1 B. L. R. A. C. 117; 11 W. R. A. O. J. 19, note. As to adopted sons of disqualified persons, see *ante*, p. 105.

⁶ *Kalidas Das v. Krishan Chandra Das* (1869), 2 B. L. R. F. B. 103, at p. 116; 11 W. R. A. O. J. 11, at p. 16.

⁷ *Gangu v. Chandrabhagabai* (1907), 32 Bom. 275; 10 Bom. L. R. 149.

⁸ See *Ooma Dibya v. Rammuni Dibya* (1812), Wm. Macnaghten's "Hindu Law," ii. 130.

Property which has once vested cannot be divested by a subsequent disqualification,¹ and conversely the removal of the ground of exclusion, as, for instance, when the insanity ceases, does not divest the estate of a person who has taken.²

The birth of a son to the disqualified person does not divest the estate of a person who has taken as heir.³

Stridhan
property.

It is undecided whether the physical defects which exclude from inheritance to the property of a male also exclude in the case of inheritance to a female,⁴ the texts on the subject being directed to the case of inheritance from males.

Sastri G. C. Sircar contends that no distinction is to be made between the two cases.⁵ The question as to whether a married daughter having a dumb son can inherit *stridhan* property under the Bengal school was considered in *Charuchunder Pal v. Nobo Sunderi Dasi*,⁶ and decided in her favour on the ground that it was not shown that the dumbness was incurable.

Change of
religion and
loss of caste.

Change of religion or loss of caste for any reason,⁷ does not *per se* exclude from inheritance.⁸

Where the circumstances create the disability apart from the exclusion of caste, the Freedom of Religion Act⁹ gives no relief, as where a widow forfeits her right by unchastity.¹⁰

As to inheritance by a prostitute daughter, see *post*, p. 372.

¹ *Abulakh Bhagat v. Bhekh Mahto* (1895), 22 Calc. 864; *Tirbeni Sahai v. Muhammad Umar* (1905), 28 All 247; *Sanku v. Putamma* (1890), 14 Mad. 289, at p. 294; *Deo Kishen v. Budh Prakash* (1883), 5 All. 509; *Balgovinda (Musst) v. Lal Buhadoor Ben. S. D. A. 1854*, p. 244; *Ran Bijai Bahadur Singh (Dewar) v. Jagatpal Singh (Rae)* (1890), 17 I. A. 173; 18 Calc. 111.

² *Deo Kishen v. Budh Prakash* (1883), 5 All. 509.

³ *Kakdas Das v. Krishan Chandra Das* (1869), B. L. R. F. B. 103; 11 W. R. A. O. J. 11; *Pareshmani Das v. Dinanath Das* (1868), 1 B. L. R. A. C. 117; 11 W. R. A. O. J. 19, note; *Deo Kishen v. Budh Prakash* (1883), 5 All. 509; *Bopuji Lakshman v. Pamdurang* (1882), 6 Bom. 616; *Pawadewa v. Venkatesh Hanmant Kulkarni* (1908), 32 Bom. 455; 10 Bom. L. R. 559.

⁴ Banerjee's "Law of Marriage," 2nd ed., pp. 346, 347.

⁵ "Hindu Law," 3rd ed., p. 333

⁶ (1891), 18 Calc. 327.

⁷ *Subbaraya Pillai v. Ramasami Pillai* (1899), 23 Mad. 171.

⁸ Act XXI. of 1850. *Bhujjun Lal v. Gya Pershad* (1870), 2 N. W. P. 446; *Taj Singh v. Kousilla (Musst)* (1866), 1 Agra, 90; *Honamma v. Timannabhat* (1877), 1 Bom. 559; *Gopal Singh v. Dhungazee* (1865), 3 W. R. C. R. 206; *Karukhedatta v. Mele Pullakat Vassa Devan Namboodri* (1866), 1 Ind. Jur. N. S. 236. See *Khunni Lal (Lala) v. Gobind Krishna Narain (Kunwar)* (1911), 38 I. A. 87; 33 All. 356; 15 C. W. N. 545; 13 Bom. L. R. 427, reversing *Gobind Krishna Narain v. Khunni Lal* (1907), 29 All. 487.

⁹ XXI. of 1850.

¹⁰ *Ante*, pp. 352, 353.

A person who is clearly proved to have completely and finally abandoned all worldly affairs,¹ as by entering "into an order of devotion" or becoming a hermit, an ascetic or a perpetual religious student,² is excluded from inheritance.³

There does not seem to be anything in the law to preclude him from returning to the world and resuming his rights if they have not vested in others.

An heir can renounce his right to succession to property.⁴

¹ This does not include Byragees, *Teeluck Chunder v. Shama Churn Prokush* (1864), 1 W. R. C. R. 209

² As to the succession to his property, if any, see *post*, pp. 399, 400.

³ "Mitakshara," chap. ii §. x. para 3; "Dīya-Bhaga," chap. v para 11;

"Vyavahara Mayukha," chap. iv. §. xi. para. 5.

⁴ See *Gooshaeen Teekumjee v. Pursotum Lalljee* (1868), 3 Agra, 238; *Ladoonah (Musunnat) v. Sanvaley* (1868), *Ibid* 191

Abandonment
of worldly
affairs by heir.

CHAPTER XI.

ORDER OF INHERITANCE TO MALES ACCORDING TO THE MITAKSHARA LAW.

Connection
between
religion and
law of
Inheritance.

"THERE is in the Hindu law so close a connection between their religion and their succession to property that the preferable right to perform the *śradh* is commonly viewed as governing also the question of the preferable right to succession of property; and as a general rule they would be expected to be found in union." ¹

As to the performance of the *śradh*, see *post*, pp. 403, 404.

"He who is entitled to celebrate the obsequial rites of the deceased is also entitled to inherit the property, and he who gets the property must perform the funeral rites of the last owner." ²

"It is not a maxim of the law that he who performs the obsequies is heir, but that he who succeeds to the property must perform them." ³

Fixed rules.

"To whatever extent rules of succession may have been founded on religious observances or may now be explained by them, it is clear that fixed rules of law for succession have been established for ages." ⁴

For an account of the origin and growth of the Hindu principles of inheritance, see "The Principles of the Hindu Law of Inheritance," by Rajkumar Sarvadhikari, Lectures II., III.

Differences
between
Mitakshara
and Bengal
systems.

The Mitakshara law of inheritance and the Bengal law on

¹ *Soorendronath Roy v. Heeramonnee Burmoneah (Mussamut)* (1868), 12 M. I. A. 81, at pp. 96, 97; 1 B. L. R. P. C. 26, at p. 36; 10 W. R. P. C. 35, at p. 38. See *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 543, at p. 614; 2 W. R. P. C. 31, at p. 39; *Neelkisto Deb Burmono v. Beer Chunder Thakoor* (1869), 12 M. I. A. 523, at p. 514; 3 B. L. R. P. C. 13, at p. 18; 12 W. R. P. C. 21, at p. 23; *Ram Singh (Bhyah)*

v. Ugur Singh (Bhyah), 13 M. I. A. 373; 5 B. L. R. 293; 14 W. R. P. C. 1; Jolly's "Hindu Law of Partition, etc.," p. 168.

² R. K. Sarvadhikari's "Hindu Law of Inheritance," p. 12.

³ Colebrooke in Strange's "Hindu Law," vol. ii. p. 242.

⁴ *Muthuswami Mudaliyar v. Sunambedu Muthukumaraswami Mudaliyar* (1896), 23 I. A. 83, at p. 90; 19 Mad. 405, at p. 409.

the same subject differ in some particulars. According to the "Mitakshara" all agnates down to the last *samanodaka* must be exhausted before cognates acquire any right.¹ According to the "Daya-Bhaga" cognate *sapindas* are preferred to all *sakulyas*, and cognate *sakulyas* to all *samanodakas*.²

There are also other differences arising from the circumstance that according to the former propinquity,³ and according to the latter, the capacity to benefit the manes of the deceased determines the order of succession.⁴

In the system of inheritance under the Mitakshara school of law propinquity of relationship is the guiding principle for determining the order of succession.⁵

Mitakshara
school.
Guiding
principle.

The circumstance that agnates down to the last *samanodaka* are preferred to cognates,⁶ some of whom are capable of giving greater religious benefits, shows this principle clearly.

"According to the 'Mitakshara' *sapinda* relationship arises between two people through their being connected by particles of one body."⁸

The expression "*sapinda*," according to the "Mitakshara," is derived from "*saha*" (with) and "*pinda*" (body), *i.e.* connected by particles of the body.⁹

"It may be that where two *sapindas* stand with reference to propinquity in the same degree of nearness to the propositus, the capacity to confer

¹ *Post*, p. 382.

² *Post*, p. 406.

³ Note 5, below.

⁴ *Post*, p. 402.

⁵ See *Suba Singh v. Sarafraz Kunwar* (1896), 19 All. 215; *Parag Bapalal Nevakram v. Mehta Harilal Surajram* (1894), 19 Bom. 631; *Balusami Pandithar v. Narayana Rau* (1897), 20 Mad. 342, at p. 347.

⁶ *Post*, p. 382.

⁷ As to *sapinda* relationship, see *post*, pp. 363, 383, 384.

⁸ *Umaid Bahadur v. Udoi Chand* (1880), 6 Calc. 119, at p. 124; 6 C. L. R. 500, at p. 512. See *Babu Lal v. Nanku Ram* (1894), 22 Calc. 339; *Nallanna v. Ponnal* (1890), 14 Mad. 149; *Ramappa Udayan v. Arumugath Udayan* (1893), 17 Mad. 182; *Subramanya Pandya Chokka*

Talavar v. Siva Subramanya Pillai (1894), 17 Mad. 316.

⁹ See *Umaid Bahadur v. Udoi Chand* (1880), 6 Calc. 119, at p. 124; 6 C. L. R. 500, at pp. 511, 512; *Amrita Kumari Debi v. Lakhi Narayan Chuckerbutty* (1868), 2 B. L. R. F. B. 28, at p. 33; *S. C. Omrit Koomaree Dabee v. Luckhee Narain Chuckerbutty*, 10 W. R. F. B. 76, at p. 33; *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1876), 5 B. L. R. 15, at p. 35; 13 W. R. F. B. 49, at p. 57; *Vijjarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at p. 262; *Lallubhai Bapubhai v. Manikvarbai* (1876), 2 Bom. 388, at p. 423; Jolly's "Hindu Law of Partition, etc.," 1883, p. 171. As to the meaning of *sapinda*, according to the Bengal school, see *post*, p. 403.

the highest amount of spiritual benefit should be applied as a test to determine the order of priority,"¹ but in some cases persons who confer no religious benefit are under the Mitakshara system admitted as heirs.

"By the law of the 'Mitakshara,' as interpreted and accepted in Western India, the preferential right to inherit in the classes of *sapindas* is to be determined by family relationship or the community of corporal particles, and not alone by the capacity of performing funeral rites. It may happen that in some instances the same person would be the preferential heir, whichever of these tests was adopted."²

"The theory that a spiritual bargain regarding the oblation of the customary offerings to the deceased by the taker of the inheritance is the real basis of the whole Indian law of Inheritance, is a mistake which has arisen in the early period of the administration of Hindu law from a too exclusive study of the writers of the Bengal school, and from certain terms often occurring in Colebrooke's translation of Indian law books, notably from the term 'connected by funeral oblations,'³ the English equivalent chosen by Colebrooke for the well-known Sanskrit term '*Sapinda*.'"⁴

"Propinquity according to the 'Mitakshara' is the ruling principle of the law of inheritance.⁵ This propinquity is consanguineous according to Visvesvāra Bhatta and Balam Bhatta, the two eminent commentators of the 'Mitakshara,' and it is measured, says Mitra Misra, the great expounder of the doctrines of the Benares school, by the spiritual benefits conferred on the deceased proprietor. Spiritual benefits, says the author of the Viramitrodaya, furnish the great test of consanguineous propinquity. Spiritual benefit, he adds, cannot create the heritable right, it is true; but it determines, with precision, the preferable right of *gotrajas* and other heirs, where there is more than one claimant to the heritage."⁶

Classes of
heirs.

The Mitakshara school recognizes two successive classes of heirs: (a) gentiles, viz. males descended from a common male ancestor entirely through males; and (b) *bandhus*, viz. persons within the degree of *sapindu* but connected through females.

¹ *Suba Singh v. Sarafraz Kunwar* (1896), 19 All. 215, at p. 232; *Ram Singh (Bhyah) v. Ugur Singh (Bhyah)* (1870), 13 M. I. A. 373, at p. 392; 5 B. L. R. 293, at p. 303; 14 W. R. P. C. 1, at p. 3. See *Balusami Pandithar v. Narayana Rau* (1897), 20 Mad. 342, at p. 348; *Gunesh Chunder Roy v. Nilkomul Roy* (1874), 22 W. R. C. R. 264; "Viramitrodaya" (G. C. Sircar's translation), pp. 155-159; Bhat-tacharya's "Hindu Law," 2nd ed., p. 458; R. K. Sarvadhikar's "Hindu Law of Inheritance," p. 713.

² *Lulloobhoy Bappoobhoy v. Cassibai* (1880), 7 I. A. 212, at p. 234; 5 Bom. 110, at p. 121; 7 C. L. R. 450; S. C.

in court below, *Lallubhai Bapubhai v. Mankuvarbai* (1876), 2 Bom. 388.

³ This has now been recognized as a mistranslation, see *Babu Lal v. Nanku Ram* (1894), 22 Calc. 339, at p. 343; *Lallubhai Bapubhai v. Mankuvarbai* (1876), 2 Bom. 388, at p. 431.

⁴ Jolly's "Hindu Law of Partition, etc.," p. 168, approved of in *Suba Singh v. Sarafraz Kunwar* (1896), 19 All. 215, at p. 227.

⁵ See *Appandai Vathiyar v. Bagubali Mudaliyar* (1909), 33 Mad. 436.

⁶ Sarvadhikar's "Hindu Law of Inheritance," pp. 647, 648, approved of in *Janki Ram v. Nand Ram* (1888), 11 All. 194, at pp. 212, 213.

The gentiles are divided into : (a) the *sagotra* or *gotraja* ¹ *sapindas*, i.e. persons within the degree of *sapinda* and connected entirely through males ; and (b) *samanodakas*.

According to the "Mitakshara" definition a *sapinda* of a man means and includes :—

" 1. Any descendant within the seventh degree ² reckoned from and inclusive of himself ; that is, any of his six descendants ;

Meaning of
"sapinda."

" 2. Any ascendant within the seventh degree reckoned from and inclusive of himself in the paternal line ;

" 3. Any collateral descendant within the seventh degree reckoned from and inclusive of any of the six paternal ascendants, that is, any of the first six ascendants in the paternal line ;

" 4. Any ascendant within the fifth degree reckoned from and inclusive of himself in the maternal line ; that is, any of the four maternal ancestors, namely, the mother, her father, her grandfather, and the rest ; and

" 5. Any collateral descendant within the fifth degree reckoned from and inclusive of any of the three maternal ancestors, beginning with the mother's father ; that is, any of the first four descendants of any of the three maternal ancestors, beginning with the mother's father." ³

According to the Mitakshara system *samanodakas* (lit. connected through libations of water) include all agnates who are not *sapindas*. ⁴

Meaning of
"samanodaka."

¹ Belonging to the same *gotra* or family.

² Colebrooke's translation of "Mitakshara," chap. ii. s. v. para. 5, is said to be inaccurate. It should be : "In this manner must be understood the succession of *sagotra sapindas* as far as the seventh person." Jolly's "Hindu Law of Partition, etc.," pp. 209, 210. In this calculation of degrees both the propositus and the heir are included.

³ *Babu Lal v. Nanku Ram* (1894), 22 Cal. 339, at p. 345, referring to R. K. Sarvadhikari's "Hindu Law of Inheritance," pp. 601-605. See *Kalian Singh v. Pan Kuar* (*Musamat*) (1875), 7 N. W. P. 338 ; "Manu,"

chap. v. para. 60 ; "Vyavahara Mayukha," chap. iv. s. viii. para. 21.

⁴ *Ram Baran Rai v. Raywanti Kuar* (*Musamat*) (1910), 32 All. 595 ; *Nursingh Narain v. Bhuttun Lall* (1864), W. R. C. R. 197 ; *Devkore (Bai) v. Amritram Jamsatram* (1885), 10 Bom 372 ; "Vyavahara Mayukha," chap. iv. s. viii. para. 21 ; "Manu," chap. v. para. 60 ; "Mitakshara," chap. ii. s. v. para. 6 ; Jolly's "Hindu Law of Partition, etc.," p. 210 ; "Viramitrodaya" (G. C. Sircar's translation), pp. 199, 200. See *Kalka Parshad v. Mathura Parshad* (1908), 35 I. A. 166 ; 30 All. 510 ; 13 C. W. N. 1.

According to some authorities they do not include relations beyond the thirteenth degree.¹

Sastri G. C. Sircar² enumerates the *samanodakas* in the following words: "They are thirteen descendants of the deceased himself, his thirteen ascendants, and thirteen descendants of each of these thirteen ascendants—all in the male line; from these the *sapindas* are to be deducted, then the remaining one hundred and forty-seven relations are within the term *samanodakas*. They are the distant agnate relations. According to some, the term includes remoter distant relations of the same *gotra*, if the relationship can be traced and is remembered."

As to the order of their succession, see *post*, pp. 381, 382.

Polyandrous
tribes.

Among polyandrous tribes succession is necessarily traced through the mother.³

Sagotra Sapindas.

Order of suc-
cession.

Under the Mitakshara law the succession first goes to the *sagotra sapindas*⁴ in order of propinquity.⁵

Different
views as to
order of pro-
pinquity.

Apart from the widow,⁶ and the daughter's son,⁷ the scheme of succession of *gotraja sapindas* is described by Rajkumar Sarvadhikari⁸ as follows:—

"There are thus fourteen classes of sapinda heirs. Four of these classes belong to propinquous sapindas, and ten to remote sapindas.

Propinquous Sapinda Heirs.

1. The three immediate descendants of the deceased.
2. The mother, the father, and their three immediate descendants.
3. The grandmother and the grandfather with their three immediate descendants.
4. The great grandmother and the great grandfather with their three immediate descendants.

Remote Sapinda Heirs.

5. The three remote descendants of the deceased.
6. The three remote descendants in the father's line.

¹ *Naraini Kuar v. Chandi Din* (1886), 9 All. 467.

² Sircar's "Hindu Law," 3rd ed., 262.

³ See *Munda Chetti v. Timmaju Hensu* (1863), 1 Mad. H. C. 380; *Timmappa Heggade v. Mahalinga Heggade* (1868), 4 Mad. H. C. 28; *Devu v. Deyi* (1885), 8 Mad. 353; *Mahalinga v. Mariyamma* (1889), 12 Mad. 462.

⁴ *Lallubhai Bapubhai v. Manku-varbai* (1876), 2 Bom. 388, at pp.

417, 437; *Rutheputty Dutt Jha v. Rajunder Narain Rae* (1839), 2 M. I. A. 133 (a Mithila case).

⁵ *Samat v. Amra* (1882), 6 Bom. 394; "Vyavahara Mayukha," chap. iv. s. viii. para. 21; Colebrooke's "Digest," vol. iii. p. 525. See "Manu," chap. ix. para. 187.

⁶ *Post*, pp. 370, 371.

⁷ *Post*, pp. 373, 374.

⁸ "Hindu Law of Inheritance," pp. 654, 655.

7. The three remote descendants in the grandfather's line.
8. The three remote descendants in the great grandfather's line.
9. The fourth in ascent with his three immediate descendants.
10. The fifth in ascent with his three immediate descendants.
11. The sixth in ascent with his three immediate descendants.
12. The three remote descendants of the fourth ancestor.
13. The three remote descendants of the fifth ancestor.
14. The three remote descendants of the sixth ancestor."

Dr. Jogendronath Bhattacharya took the same view in his work on Hindu law.¹ It was also taken by Mr. Rama Row in the tables drawn up by him for Sir H. N. Cunningham,² by Baboo Shama Churn Sircar in his "Vyavāstha Chandrika,"³ and Mr. Strange in his "Manual of Hindu Law."⁴

According to what is said to be Mr. Harrington's view,⁵ "each line should be continued to the sixth descendant, so that the grandparents should be excluded by the seventh descendant of the father."⁶ With regard to these views Baboo Jogendra Chundra Ghose⁷ says: "This rule" (as enunciated in the former view) "is in accordance with the later theory of *sapinda*, and probably more consistent with the principle of propinquity. But the rule of Mr. Harrington is simpler, and is in accordance with the more ancient theory of *sapindu* which governs the Mitakshara school." In the following order of succession, which is taken from Pundit R. K. Sarvadhikari's "Hindu Law of Inheritance," Dr. J. N. Bhattacharya's "Hindu Law," 2nd edition, Sastri G. C. Sircar's "Hindu Law," and from Mr. Rama Row's list, Mr. Harrington's views have been disregarded.

In addition to possible *gotraja sapindas* the following list includes some remote ascendants and descendants who, although theoretically heirs, cannot in the ordinary course of nature be expected to survive the deceased in question.

The *sagotra sapindas* succeed in the following order:—

1. Son.⁸

Son.

If there be more than one son, the sons, whether they are by the same or by different mothers, succeed equally.⁹

A son, son's son, or son's son's son who has remained joint with his father, grandfather, or greatgrandfather, as the case may be, excludes a son,¹⁰ before divided.

¹ 2nd ed., p. 436.

² Cunningham's "Digest of Hindu Law," p. 115.

³ Vol. iii. pp. 90 *et seq.*

⁴ Para. 315.

⁵ As expressed in *Rutchputty Dutt Jhu v. Rajunder Narain Rae* (1839), 2 M. I. A. 133, but the question in that case was only whether all *sagotra sapindas* come before *bandhus*.

⁶ Ghose's "Hindu Law," 2nd ed., p. 148.

⁷ *Ibid.*

⁸ "Mitakshara," chap. ii. s. xi. para. 28; *Ramappa Naicken v. Sithammal* (1879), 2 Mad. 182; *Yacheroddy Chinna Bassavapa v. Yacheroddy Goudapa* (1835), 5 W. R. P. C. 114.

⁹ *Nugendur Narain (Rajah) v. Raghonath Narain Dey*, W. R. (1864), C. R. 20.

¹⁰ *Ramappa Naicken v. Sithammal* (1879), 2 Mad. 182, at p. 185; *Nana Tawker v. Ramachandra Tawker* (1908), 32 Mad. 377.

son's son,¹ or son's son's son, who has separated. Failing an unseparated son,² son's son, or son's son's son, a separated son succeeds, his son or son's son taking by representation.³

Illegitimate
sons.

“The Hindu law does not, like the English law, consider an illegitimate person *quasi nullius filius*. It recognizes his relationship to his father and family, and secures him substantial rights.”⁴

As to his right to inherit to his mother, see *post*, p. 445.

Twice-born
classes

According to all the schools the illegitimate son of a member of one of the twice-born classes has no rights of inheritance to his father, even if his father was himself illegitimate,⁵ but he is entitled to maintenance.⁶

A custom to inherit might be valid, but in all the reported cases in which one has been set up, the right has been negatived.⁷

In *Radhakshen v. Rajkuar* (1891),⁸ the Allahabad High Court upheld the rights of the illegitimate sons of a Brahmin who had been outcasted, had separated from his family, and acquired, after such separation, the property in dispute.

Sudras,

According to the Mitakshara school⁹ in the case of *Sudras*, an illegitimate son is an heir of his father,¹⁰ provided his mother

¹ *Faknappa v. Yellappa* (1896), 22 Bom. 101. See *Marudayi v. Doraisami Karamban* (1907), 30 Mad 348, at p. 353.

² See *Marudayi v. Doraisami Karamban* (1907), 30 Mad. 348, *Ramappa Naicken v. Suthammal* (1879), 2 Mad 182; *Balkrishna Trimbak Tendulkar v. Savitribai* (1878), 3 Bom. 54, “Mitakshara,” chap. i. s. vi paras. 4-6.

³ *Post*, pp. 369, 370

⁴ *Pandayya Telaver v. Puli Telaver* (1863), 1 Mad. H. C. 478, at p. 482; *Ram Kali v. Jamma* (1908), 30 All. 508, at p. 509.

⁵ *Hari Krishna Devi Garu (Sri) Gajapaty v. Radhika Patta Mahadev Garu (Sri Gajapaty)* (1865), 2 Mad. H. C. 369.

⁶ *Run Mardun Syn (Chualorya) v. Sahub Purhulad Syn* (1857), 7 M. I. A. 18; 4 W. R. P. C. 132; *Parachat (Rajah) v. Zakim Singh* (1877), 4 I. A. 159; 3 Calc. 214; *Muttusawmy Jagaveera Yetappa Naicker v. Vencata-swara Yettaya* (1868), 12 M. I. A.

203; 2 B. L. R. P. C. 15; 11 W. R. P. C. 6, S. C. on remand, *Coomara Yetappa Naikar v. Venkateswara Yetta* (1870), 5 Mad. H. C. 405; *Pandayya Telaver v. Puli Telaver* (1863), 1 Mad. H. C. 478, at p. 482; *Puhoop Singh v. Khooman* (1866), 3 Agri. 313, “Mitakshara,” chap. i. s. xii para 3; *ante*, pp. 95, 202.

⁷ *Bhaoni v. Maharaj Singh* (1881), 3 All. 738; *Mohun Sing v. Chumun Rai* (1799), 1 Ben. Sel. R. 28 (new edition, 37); *Pershad Singh v. Mulhoree (Ranec)* (1821), 3 Ben. Sel. R. 132 (new edition, 176).

⁸ 13 All. 573. Although in this case substantial justice may have been done it is submitted that the loss of caste and subsequent conduct did not prevent the application of the Hindu law.

⁹ As to the Bengal school, see *post*, p. 468.

¹⁰ *Inderun Valungyooly Taver v. Ramasawmy Pandia Talaver* (1869), 13 M. I. A. 141, at p. 159; 3 B. L. R. P. C. 1, at p. 21; 12 W. R. P. C. 41,

was a kept mistress of his father,¹ and he was not the fruit of intercourse with a woman whom the law did not permit the father to marry.

Thus a son by a married woman,² or by a woman within the prohibited degrees for marriage,³ or by a widow whose remarriage is not permitted by Hindu law,⁴ does not inherit.

The Mitakshara law on this subject is based upon the following text of Yajñavalkya :⁵ " Even the son begotten by a Sudra on a Dasi⁶ shall have such share as (the father) may allot. (But if there be no partition till) after the father's death, then the brothers are to assign him half a share : if there be no such brothers nor daughter's sons, he takes the whole." The " Mitakshara "⁷ supplements this by providing that if there be a daughter or daughter's son, the illegitimate son takes half a share, and that failing these he takes the whole estate.

The following is the result of the decisions upon these texts : Where there are legitimate sons, the illegitimate son becomes a coparcener with them,⁸ with rights of survivorship to the exclusion of the widow,⁹ and on a partition he takes half the share of a legitimate son.¹⁰

at p. 43 ; S. C. in court below, *Pandayya Telaver v. Puli Telaver* (1863), 1 Mad. H. C. 478 ; *Krishnayyan v. Muttusami* (1883), 7 Mad. 407, at p. 412 ; *Brihadavani v. Radhamani* (1888), 12 Mad. 72, at p. 86 ; *Vencaturam v. Vencata Lutchemm Ummal* (1815), 2 Str. N. C. 127, at p. 137. He is a male lineal descendant within the meaning of the Agra Tenancy Act (II. (N. W. P.) of 1901), s. 22, *Ram Kali v. Jumna* (1908), 30 All. 508.

¹ *Sarasuti v. Mannu* (1879), 2 All. 134 ; *Krishnayyan v. Muttusami* (1883), 7 Mad. 407 ; *Sadu v. Barza* (1878), 4 Bom. 37, at p. 44 ; *Rahi v. Govinda Valad Teja* (1875), 1 Bom. 97 ; R. K. Sarvadukari (" Hindu Law of Inheritance," p. 939) contends that the law under the " Mitakshara " is the same in this respect as under the Bengal school (*post*, p. 408).

² *Rahi v. Govinda Valad Teja* (1875), 1 Bom. 97 ; *Dalip v. Ganpat* (1886), 8 All. 387 ; *Vencatachella Chetty v. Parvatham* (1875), 8 Mad. H. C. 134. See as to this, Jolly's " Hindu Law of Partition, etc.," p. 188. As to his right of maintenance, see *ante*, p. 202.

³ *Datt Parisi Nayudu v. Datti Bangaru Nayudu* (1869), 4 Mad. H. C. 204.

⁴ *Annayan v. Chinnan* (1909), 33 Mad. 366.

⁵ II. 133, 134. Ghose's " Hindu Law," 2nd ed., p. 662.

⁶ This expression, though primarily meaning a female slave, includes any unmarried female Sudra, see Jolly's " Hindu Law of Partition, etc.," p. 189.

⁷ Chap. I. s. xu para. 2.

⁸ *Jogendra Bhupati Herri Chundun Mahapatra (Raja) v. Nityanund Mansingh* (1890), 17 I. A. 128 ; 18 Cal. 151 ; S. C. in court below (1885), 11 Cal. 702 ; *Vencaturam v. Vencata Lutchemm Ummal* (1815), 2 Str. N. C. 127, at p. 137 ; *ante*, pp. 220, 221.

⁹ *Sadu v. Barza* (1878), 4 Bom. 37.

¹⁰ *Puroothu v. Thirumalai* (1887), 10 Mad 334, at p. 344 ; *Rahi v. Govinda, Valad Teja* (1875), 1 Bom. 97, at p. 104 ; *Kesaree v. Sumardhan* (1873), 5 N. W. P. 94 ; *Chullammal v. Ranganatham Pillar* (1910), 24 Mad. 277 ; " Mitakshara," chap. I. s. xii. para. 2, " Vyavahara Mayukha," chap. iv. s. 4, para. 32 ; " Viramitrodaya " (G. C. Sircar's translation), p. 130. Dr. Jogendranath Bhattacharya (" Hindu Law," 2nd ed., p. 434) says as to the text of the " Mitakshara " (*ante*, p. 22), " The injunction is so worded as to show clearly that the illegitimate son has no legal right to such share."

There is a difference of opinion as to whether the half share to be taken by an illegitimate son means half the share which has been actually taken by the legitimate son,¹ or whether it means half the share which the illegitimate son would have taken if he had been legitimate.² In the former case a legitimate and illegitimate son would share in the proportion of two to one, and in the latter case they would share in the proportion of three to one. It is submitted that reason and the greater authority is to be found in support of the former view.

With daughter
or daughter's
son.

The rights of an illegitimate son in competition with a widow, a daughter, or a daughter's son, do not seem to be quite settled. In competition with a daughter or daughter's son, he would, under the above text of the "Mitakshara,"³ take half the share taken by such daughter or daughter's son.⁴ It has been held in Madras that he is an equal sharer with a daughter's son,⁵ but it is submitted that this decision is not justified by the text⁶ of the "Mitakshara."

Competition
with widow.

It has been held in Bombay⁷ that where there is a widow and an illegitimate son, the latter takes the whole property subject to the maintenance of the widow, but that decision has been doubted in Madras.⁸ The case of a widow was not provided for by the texts, probably on the ground that her rights had not then arisen, but as she is now recognized as a preferable heir to a daughter, it is submitted that her rights in competition with an illegitimate son are not less than those of a daughter, and that the texts might be construed as implying the rights of an illegitimate son to a half share in the case of the existence of any heir down to and including a daughter's son, and to not more than such half a share,⁹ otherwise the result might be that, where there is an illegitimate son, the daughter gets a share to the exclusion of the widow, and where there is no such son the daughter is postponed to the widow. This is somewhat anomalous, but it is said to be "one of those arbitrary arrangements not uncommon in Hindu law."¹⁰

¹ See *Sadu v. Baiza* (1878), 4 Bom. 37, at p. 52; Jolly's "Hindu Law of Partition, etc.," pp. 188, 189; *Kesaree v. Samardhan* (1873), 5 N. W. P. 94.

² Mayne's "Hindu Law," 7th ed., p. 749; West and Bühler's "Hindu Law," 2nd ed., pp. 40, 41, 108, 110. Cf. "Mitakshara," chap. i. s. vii. para. 7.

³ *Ante*, p. 367.

⁴ *Sarasuli v. Mannu* (1879), 2 All. 134; Ghose's "Hindu Law," 2nd ed., pp. 656, 661; Sarvadhikari's "Hindu Law of Inheritance," p. 943. See *Ranoji v. Kandoji* (1885), 8 Mad. 557, at p. 561; *Rahi v. Govinda Valad Teja* (1875), 1 Bom. 97, at p. 104.

⁵ *Parvathi v. Thirumalai* (1887), 10 Mad. 334, at p. 344; Strange's "Hindu Law," vol. ii. p. 70.

⁶ *Ante*, p. 367.

⁷ *Rahi v. Govinda Valad Teja* (1875), 1 Bom. 97, at p. 106. Dr. Jolly ("Hindu Law of Partition, etc.," pp. 189, 190) supports this view. See *Sadu v. Baiza* (1878), 4 Bom. 37, at p. 52, which was a case of the "sons succeeding as coparceners, and therefore stands upon a different footing, see *ante*, pp. 220, 221.

⁸ *Ranoji v. Kandoji* (1885), 8 Mad. 557, at pp. 561, 563.

⁹ See Mayne's "Hindu Law," 7th ed., pp. 747-749; *Shesgiri v. Girewa* (1887), 14 Bom. 282; *Ranoji v. Kandoji* (1885), 8 Mad. 557, at pp. 561, 563; *Ramalinga Muppan v. Pavadai Goundan* (1901), 25 Mad. 519, at pp. 521, 522; *Ambabai v. Govind* (1898), 23 Bom. 257, at p. 265.

¹⁰ *Sadu v. Baiza* (1878), 4 Bom. 37, at p. 56.

It has been held in Madras¹ that when there is a widow and an illegitimate son, they each get half, but it is submitted that that decision is not correct.² In Bombay a case,³ where there was a widow and daughter and illegitimate sons, it was held that the sons took a half share, but the question as to competition with the widow did not arise.

The illegitimate son takes the whole in preference to any heir after a daughter's son.⁴

It has been held in Madras that an undivided brother⁵ and a widow⁶ are to be preferred to an illegitimate son in the succession to an impartible Raj; but in *Jogendra Bhupati Hurri Chundun Mahapatra (Raja) v. Nityanund Mansingh*,⁷ the Judicial Committee held that an illegitimate son succeeded to his brother in an ancestral impartible Raj as against the widows and daughter of the brother.

An illegitimate son has only rights in his father's or mother's property. He does not succeed as heir to any collaterals.⁸

For a comparison of the rights of an adopted son and of an illegitimate son, see *Parvathi v. Thirumalai* (1889), 10 Mad. 334, at p. 344.

2. Son's son.⁹

Son's son.

Son's sons take by representation in equal shares the share of a son who has predeceased his father, even if the deceased has left a son.¹⁰

As to the preference of the undivided before the divided son's sons, see *ante*, pp. 365, 366.

The legitimate son of an illegitimate son has the same rights of

¹ *Chinnamal v. Varadarajulu* (1892), 15 Mad. 307; *Meenakshi Anni v. Appakutti* (1909), 33 Mad. 226.

² See Ghose's "Hindu Law," 2nd ed., p. 661.

³ *Shesgiri y. Girewa* (1889), 14 Bom. 282.

⁴ *Sarasuti v. Mannu* (1879), 2 All. 134; "Dattaka Chandrika," chap. v. paras. 50, 51.

⁵ *Parvathi v. Thirumalai* (1887), 10 Mad. 334.

⁶ *Kulanthai Natchear v. Ramamani* (Mad. Reg. App. 86 of 1865), referred to in *Parvathi v. Thirumalai* (1887), 10 Mad. 334, at p. 346.

⁷ (1890), 17 I. A. 128; 18 Calc. 151; *post*, p. 497.

⁸ *Shome Shankar Rajendra Varere v. Rajesar Swami Jangam* (1898), 21 All. 99, where it was held that he did not inherit to a brother; *Par-*

vathi v. Thirumalai (1887), 10 Mad. 334, at p. 344; *Nissar Murtojah v. Dhunwunt Roy (Kowar)* (1863), Marsh. 609; *Ramalinga Muppan v. Pavadai Goundan* (1901), 25 Mad. 519, at p. 522; *Krishnayyan v. Muttusami* (1883), 7 Mad. 407; *Karuppa Goundan v. Kumarasami Goundan* (1901), 25 Mad. 429; *Ravi v. Sakuji* (1909), 34 Bom. 321; 12 Bom. L. R. 204.

⁹ *Balkrishna Trimbak Tendulkar v. Savitribai* (1878), 3 Bom. 54. See "Mitakshara," note to chap. xi.

¹⁰ *Marudayi v. Doraisami* (1907), 30 Mad. 348; *Ananda Bibee v. Nounil Lal* (1882), 9 Calc. 315, at p. 320; *Ram Singh (Bhyah) v. Ugur Singh (Bhyah)* (1870), 13 M. I. A. 363, at p. 378; *Luchomun Pershad v. Debee Pershad* (1864), 1 W. R. C. R. 317; *Rutheputty Dutt Jha v. Rajunder Narain Rae* (1839), 2 M. I. A. 133, at p. 158.

succession as his father had against the brothers and sons of his grandfather.¹

A son's daughter is not a *gotraja sapinda* even in Bombay.²

Son's son's
son.

3. Son's son's son.³

Where a son and his sons have predeceased the deceased, the son's son's son will take by representation, even though the deceased or his son has left other sons.⁴ If there be more than one son's son's son, they take in equal shares.

Widow.

4. Widow.⁵

On marriage a wife enters the *gotra* (family) of her husband.⁶ A widow is looked upon as being the surviving half of her husband.⁷

As to the interest taken by a widow in the estate of her husband, see *post*, Chap. XV.

Among the Tiyan community in Calicut a brother succeeds to self-acquired property in preference to the widow.⁸

¹ *Ramalinga Muppan v. Pavadai Goundan* (1901), 25 Mad. 519; *Fakirappa v. Fakirappa* (1902), 4 Bom. L. R. 809. As to the illegitimate son of an illegitimate son, see *ibid.* at p. 524; as to the right of an illegitimate son, see *ante*, pp. 366-369.

² *Venilal v. Parjaram* (1894), 2 Bom. 173.

³ See "Mitakshara," note to chap. xi.

⁴ See cases *ante*, p. 369, note 10.

⁵ "Mitakshara," chap. ii. s. i. paras. 5, 6; s. ii. para. 2; "Vivada Chintamani" (P. C. Tagore's translation), pp. 290, 291; *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 543, at pp. 611, 612; 2 W. R. P. C. 31, at p. 39; *Periasami v. Periasami* (1878), 5 I. A. 61; 1 Mad. 312; 2 C. L. R. 81; *Doorga Persad Singh (Tekait) v. Doorga Konwari (Tekaitni)* (1878), 5 I. A. 149, at p. 160; 4 Calc. 190, at p. 202; 3 C. L. R. 31, at p. 40; *Venkata Gopalla Narasimha Row Bahadur (Rajah Suraneni) v. Lahshma Venkama Row (Rajah Suraneni)*, 13 M. I. A. 113; 3 B. L. R. P. C. 41; 12 W. R. P. C. 40; *Radhika Patta Maha Devi Garu (Sri Gajapathi) v.*

Nilamani Patta Maha Devi Garu (Sri) Gajapathi (1870), 13 M. I. A. 497; 6 B. L. R. 202; 14 W. R. P. C. 33; *Narayan Ayyar v. Lakshmi Ammal* (1867), 3 Mad. H. C. 289; *Patni Mal (Rajah) v. Ray Manohar Lal* (1834), 5 Ben. Sel. R. 349 (new edition, 410); *Keerut Sing v. Koolahul Sing* (1839), 2 M. I. A. 331; 5 W. R. P. C. 131; *Soorjoon (Musumat) v. Ishree Brahmun* (1871), 3 N. W. P. 74; *Goolab (Mt.) v. Phool (Mt.)* (1816), 1 Borr. 154; *Govinddas Dhoolubhdas v. Muha Lukshumee* (1819), 1 Borr. 241. As to Jains, see *Sheo Singh Rai v. Dakho (Musst)* (1874), 6 N. W. P. 382. S. C. on appeal (1878), 5 I. A. 87; 1 All. 688; 2 C. L. R. 193.

⁶ *Lallubhai Bapubhai v. Manku-varbai* (1876), 2 Bom. 388, at pp. 420, 440.

⁷ *Murugayi v. Viramakali* (1877), 1 Mad. 226, at p. 228; Colebrooke, "Digest," vol. iii. p. 458; "Smriti Chandrika," chap. xi. s. i. para. 6. See Bhattacharya's "Hindu Law," 2nd ed., p. 437, note.

⁸ *Rarichan v. Perachi* (1892), 15 Mad. 261.

Where there is more than one widow, they all take as a single heir with Two or more rights of survivorship¹ and partition.² widows.

There is nothing to prevent a widow from releasing her right of survivorship.³

In the case of impartible property the senior widow takes, the other Impartible widows having rights of maintenance.⁴ property.

The estate of the widow is divested by the birth⁵ or Divesting of adoption⁶ of a son. estate.

5. Daughter.⁷

Daughter.

Of daughters an unmarried one is preferred,⁸ whether Unmarried. or not she is well to do.⁹

Failing unmarried daughters, married daughters succeed.¹⁰ Married. Among married daughters the one who is "unprovided for" is to be preferred to the one who has means,¹¹ either derived from her father or from other sources.¹²

Comparative poverty is in each case the criterion by which the claims of married daughters are settled,¹³ but such comparison does not apparently involve a minute investigation of the means of the daughters, the question being whether the pecuniary circumstances of the one are so far different from those of the other as to give her a prior right of inheritance.¹⁴

¹ *Rumea v. Bhagee* (1862), 1 Bom. H. C. 66; *Jijoyiamba Bayi Saija* (H. H. M.) v. *Kamakshi Bayi Saiba* (H. H. M.) (1868), 3 Mad. H. C. 424; *Bhugwandeem Doobey v. Myna Bae* (1867), 11 M. I. A. 487; 9 W. R. P. C. 23; *Nilamani Patta Maha Devi Garu* (Sri Gajapathi) v. *Radhamani Patta Maha Devi Garu* (1877) 4 I. A. 212; 1 Mad. 290; *Venka yamma Garu* (Raja Chelikani) v. *Venkataramayamma* (Raja Chelikani) (1902), 29 I. A. 156, at p. 165; 25 Mad. 678, at p. 687; 7 C. W. N. 1, at p. 8; 4 Bom. L. R. 657.

² See *ante*, pp. 312, 313.

³ *Ramakal v. Ramasami Naickan* (1890), 22 Mad. 522.

⁴ Mayne's "Hindu Law," 7th ed., p. 752.

⁵ *Ante*, pp. 346, 347.

⁶ *Ante*, p. 187.

⁷ "Mitakshara," chap. ii. s. ii. para. 2; "Vyavahara Mayukha," chap. iv. s. viii. paras. 10-12; *Pranjeevandas Toolseydas v. Dewcootverbaee* (1859), 1 Bom. H. C. 130.

⁸ "Mitakshara," chap. ii. s. ii. para. 2; "Vyavahara Mayukha," chap. v.

s. viii. para. 11; *Dowlut Koor v. Burma Deo Sahoy* (1874), 14 B. I. R. 246, note; 22 W. R. C. R. 54.

⁹ *Jamnabai v. Khimji Vullubdass* (1889), 14 Bom. 1, at p. 13.

¹⁰ "Mitakshara," chap. ii. s. ii. para. 3; *Himunchull v. Maharaj Singh* (1866), 1 Agra, 210; *Buryar Singh v. Hunsae* (Mussumat) (1867), 2 Agra, 166; *Golab Koonwer* (Musst) v. *Shib Sahai* (1867), 2 Agra, 54; *Binode Koomaree Dabee v. Purdhan Gopal Sahee* (1865), 2 W. R. C. R. 176, at p. 177.

¹¹ "Mitakshara," chap. ii. s. ii. para. 4; "Vyavahara Mayukha," chap. iv. s. viii. para. 12.

¹² *Danno v. Darbo* (1882), 4 All. 243. The text on which the court relied in this case, viz. "Mitakshara," chap. ii. s. xi. para. 13, refers to the succession to *stridhan* property.

¹³ *Audh Kumari v. Chandra Dai* (1879), 2 All. 561.

¹⁴ *Bakubai v. Manchhabai* (1864), 2 Bom. H. C. 5; *Poli v. Narotum Bapu* (1869), 6 Bom. H. C. A. C. J. 183; *Totawa v. Basawa* (1898), 23 Bom. 229.

A married daughter with means is preferred to a daughter's son.¹

The Mithila law makes no distinction between indigence and wealth, in the case of daughters.²

A daughter who has, or is likely to have, male issue is not, as in Bengal,³ preferred to a barren or childless widow.⁴

Except in the Bombay Presidency, where her interest passes to her heir,⁵ on the death of a daughter the estate taken by her, as such, passes (in preference to her sons) to her sisters who have taken or are competent to take.⁶

Except in the Bombay Presidency, where daughters take not only absolute but several estates,⁷ daughters take by inheritance a joint estate with rights of survivorship⁸ and partition.

The circumstance that her unmarried sister had been preferred to her, does not exclude a married daughter from the inheritance on the death of such sister.⁹

Prostitute daughters.

"A woman, who in her maiden condition becomes a prostitute, being neither a *kanya* (unmarried) nor a *kulastrī* (married), but being at the same time, notwithstanding her prostitution, a qualified heir, as held in *Advaya v. Rudrava*,¹⁰ would be entitled to succeed to her father's property only in default of either unmarried or married sisters."¹¹

A daughter has no interest if her brother is alive.¹²

As to the rights of the daughter of a Sudra in competition with the father's illegitimate son, see *ante*, p. 368.

As to the interest taken by a daughter, see *post*, Chap. XV.

Illegitimate daughters have no rights of inheritance.¹³

For cases of customs, excluding daughters and their issue, see *Bajrangī Singh v. Manokarnika Balhsh Singh* (1907), 35 I. A. 1; 30 All. 1; 12 C. W. N. 74; 9 Bom. L. R. 1348 (Bhale Sultan Chhathris); *Nanaji Utpat*

¹ *Dulari v. Mul Chand* (1910), 32 All. 314.

² "Vivada Chintamani" (P. C. Tagore's translation), p. 293.

³ *Post*, p. 409.

⁴ *Uma Deyi (Srimati) v. Gokoolanund Das Mahapatra* (1878), 5 I. A. 40; 3 Calc. 587; 2 C. L. R. 51; *Bakubai v. Manchhabai* (1864), 2 Bom. H. C. 5; *Poli v. Narotum Bapu* (1869), 6 Bom. H. C. A. C. J. 183; *Simmani Ammal v. Muttammal* (1880), 3 Mad. 265.

⁵ *Bhagirthibai v. Kahnurjirav* (1886), 11 Bom. 285; *post*, p. 451.

⁶ *Bajinath v. Mahabir* (1878), 1 All. 608; *Sant Kumar v. Deo Saran* (1886), 8 All. 365, at pp. 369, 370; *Dulari v. Mul Chand* (1910), 32 All. 314; see *post*, p. 410.

⁷ *Post*, p. 395.

⁸ *Bulakhidas v. Keshavlall* (1881), 6 Bom. 85; *Kattama Nachiar v. Dorasingha Tevar* (1871), 6 Mad. H. C. 310.

⁹ *Dowlut Kooer v. Burma Deo Sahoy* (1874), 14 B. L. R. 246, note; 22 W. R. C. R. 54. See *Kattama Nachiar v. Dorasingha Tevar* (1871), 6 Mad. H. C. 310, at p. 332; *Dulari v. Mul Chand* (1910), 32 All. 314.

¹⁰ (1879), 4 Bom. 104.

¹¹ *Tara v. Krishna* (1907), 31 Bom. 495, at p. 510; 9 Bom. L. R. 774.

¹² *Yachereddy Chinna Bassavapa v. Yachereddy Gowdapa* (1835), 5 W. R. P. C. 114.

¹³ *Bhikya v. Babu* (1908), 32 Bom. 562; 10 Bom. L. R. 736.

(*Bhau*) v. *Sundrabai* (1874), 11 Bom. H. C. 249 (Utpat families of Pandharpur); *Pragjivan Dayaram* v. *Reva (Bai)* (1881), 5 Bom. 482; *Verabhai Ajubhai* v. *Hiraba (Bai)* (1903), 30 I. A. 234, at p. 236; 27 Bom. 492, at p. 498; 7 C. W. N. 716, at pp. 718, 719 (Chudasama Gameti Garasias); *Parbati Kunwar (Mussammatt)* v. *Chandarpal Kunwar (Rani)* (1909), 36 I. A. 125; 31 All. 457; 13 C. W. N. 1073; 11 Bom. L. R. 890 (Chauhan Rajputs in Oudh). In a case of Gohel Girasias the custom was not established, *Ranchhodas Vithaldas (Desai)* v. *Rawal Nathubai Kesabhai* (1895), 21 Bom. 110.

On the death of all the daughters the property passes, except in Bombay,¹ to the then next heir of the father.²

6. Daughter's son.³

Daughter's
son.

He cannot succeed as long as there is any daughter capable of inheriting in existence.⁴

The daughter's son is the only heir connected through a female (*bandhu*) who under the Mitakshara system is placed in the order of succession amongst the *gotraja sapindas*. He is so placed in accordance with special texts.⁵

If he predeceases any one of his maternal grandfather's daughters, his son does not take his place,⁶ but succeeds as a *bandhu*.⁷

As to the succession of a daughter's son in competition with the illegitimate son of his mother's father, see *ante*, p. 368.

Except under the "Mayukha," daughters' sons take *per capita*, not *per stirpes*.⁸

Where a widowed daughter having sons remarries, and has sons, apparently the sons of both marriages would succeed equally, but there is no decision on the subject.

When the sons of a daughter are living together as members of a joint family, property so inherited belongs to the coparcenary, and there is a right of survivorship.⁹

As in the case of other male heirs, on the death of a daughter's son,

¹ *Post*, p. 451.

² *Chotal Lall* v. *Chunno Lall* (1878), 6 I. A. 15; 4 Calc. 744; 3 C. L. R. 465; *Muttu Vaduganadha Tevar* v. *Dorasinga Tevar* (1881), 8 I. A. 99; 3 Mad. 290; *ante*, p. 349.

³ *Kattama Nachiar* v. *Dorasinga Tevar* (1871), 6 Mad. H. C. 310; *Buryar Singh* v. *Hunsee (Mussumat)* (1867), 2 Agra, 166; *Ram Swaruth Pandey* v. *Basdeo Singh (Baboo)*, (1867), *Ibid.* 168; *Surja Kumari* v. *Gandhrap Singh* (1837), 6 Ben. Sel. R. 140 (new ed., 168) (a Mithila case).

⁴ *Sant Kumar* v. *Deo Saran* (1886), 8 All. 365; *Dulari* v. *Mul Chand* (1910), 32 All. 314.

⁵ "Mitakshara," chap. ii. s. ii. para. 6; "Smriti Chandrika," chap. xi. s. ii. para. 28; "Vyavahara Mayukha," chap. iv. s. viii. para. 13; "Vivada Chintamani" (Tagore's translation), p. 294.

⁶ *Srinivasa* v. *Dandayudapani* (1889), 12 Mad. 411; *Dharup Nath* v. *Gobind Saran* (1886), 8 All. 614.

⁷ *Post*, p. 388.

⁸ *Ante*, p. 351.

⁹ *Venkayamma Garu (Raja Chelikani)* v. *Venkataramanayamma (Raja Chelikani)* (1902), 29 I. A. 156; 25 Mad. 678; 7 C. W. N. 1; 4 Bom. L. R. 657; *ante*, pp. 232, 233.

in whom the estate has vested, the succession passes to his heirs, and not to the heirs of his maternal grandfather.¹

Impartible property.

Impartible property passes on the death of all daughters to the eldest surviving daughter's son.²

Parents of Deceased and their Descendants to the Third Degree.

Mother.

7. Mother.³

"Mayukha."

Where the "Mayukha" prevails⁴ the father is preferred to the mother.⁵

Stepmother.

Except that in Bombay she has a right of inheritance as the widow of her husband,⁶ and that in Madras she has possibly some right of inheritance as a *bandhu*,⁷ neither a stepmother nor a stepgrandmother has any rights of inheritance.⁸

Father.

8. Father.⁹

Brother.

9. Brother.¹⁰

Uterine brothers, i.e. brothers of the whole blood, take before brothers of the half blood.¹¹

¹ *Sibta v. Badri Prasad* (1880), 3 All. 134; *Muttuvaduganadha Tevar v. Periasami* (1896), 23 I. A. 128; 19 Mad. 451; S. C. in court below (1892), 16 Mad. 11; *Ramjoy See v. Tarrachund* (1816), 2 Morley's Digest, 79. *Ante*, p. 349.

² *Kattama Nachiar v. Dorasinga Tevar* (1871), 6 Mad. H. C. 310, at p. 333; *Mutta Vaduganadha Tevar v. Dorasinga Tevar* (1881), 8 I. A. 99; 3 Mad. 290.

³ *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1; 1 Mad. 174; *Balkrishna Bapuji Apte v. Lakshman Dinkar* (1890), 14 Bom. 605; "Mitakshara," chap. ii. s. iii. para. 3; "Vivada Chintamani" (P. C. Tagore's translation), pp. 293-295. The adoptive mother comes before the adoptive father, *Anandi v. Hari Suba Pat* (1909), 33 Bom. 404; 11 Bom. L. R. 641. As to her right to inherit, see *ante*, p. 175.

⁴ *Ante*, p. 15.

⁵ *Khodabhai Mahiji v. Bahdhar Dala* (1882), 6 Bom. 541; "Vyavahara Mayukha," chap. iv. s. viii. para. 14. See also "Smriti Chandrika," chap. xi. s. i. para. 3; s. ii. paras. 12-15.

⁶ *Post*, pp. 396, 397; *Russoobai v. Zoolekhabai* (1895), 19 Bom. 707; *Rakhmabai v. Tukaram* (1886), 11 Bom. 47; *Kesserbai v. Valab Raoji* (1879), 4 Bom. 188, at p. 203.

⁷ See *Muttammal v. Vengalakshmiammal* (1882), 5 Mad. 32; *Kumara velu v. Virana Goundan* (1879), 5 Mad. 29; *Mari v. Chinnammal* (1884), 8 Mad. 107, at pp. 117, 127, 129; *post*, pp. 397, 398.

⁸ *Joti Lal (Lala) v. Durani Kower (Mussamat)* (1864), B. L. R. F. B. R. 67; W. R. F. B. R. 173; *Tahaldai Kumri v. Gaya Pershad Sahu* (1909), 37 Calc. 214; 14 C. W. N. 443; *Rama Nand v. Surgiani* (1894), 16 All. 221; *Muttammal v. Vengalakshmiammal* (1882), 5 Mad. 32, approving of *Kumara velu v. Virana Goundan* (1879), 5 Mad. 29; *Ramasami v. Narasamma* (1884), 8 Mad. 133; *Mari v. Chinnammal* (1884), 8 Mad. 107; *Kesserbai v. Valab Raoji* (1879), 4 Bom. 188, at p. 208.

⁹ "Mitakshara," chap. ii. s. iii. para. 2.

¹⁰ "Mitakshara," chap. ii. s. v. para. 1; *Burhum Deo Roy v. Punchoo Roy* (1865), 2 W. R. C. R. 123.

¹¹ "Mitakshara," chap. ii. s. iv. paras. 5, 6; *Anant Singh (Thakur) v.*

The "Mayukha" ¹ places the sons of brothers of the whole blood after their fathers, and ² declares that brothers of the half blood share with the paternal grandfather.³

"If there be a competition between whole brothers associated and whole brothers unassociated, and between half brothers associated and half brothers unassociated, the former exclude the latter." ⁴

"The reunited half brother and the separated whole brother take the estate in equal shares." ⁵

As to whether in the case of the remarriage of a widow,⁶ or the marriage of a woman after divorce,⁷ there is any relationship between the sons of the different marriages, *quære*.⁸ It is submitted that there is none, except perhaps where the remarriage is authorized by local or caste custom.⁹

As to sisters, see *post*, p. 377.

10. Brothers' sons.¹⁰

Brothers'
sons.

According to the "Mitakshara" and the "Mayukha," sons of brothers of the whole blood are preferred to sons of brothers of the half blood ¹¹ (an undivided member of each class being preferred to a divided member),¹² and according to the latter authority sons of brothers of the half blood are postponed until after the father's brother.¹³

According to the "Mayukha," sons of brothers who are dead share along with surviving brothers, but this rule does not go beyond brothers and brothers' children.¹⁴

Durg Singh (Thakur) (1910), 37 I. A. 191; 32 All. 363; 14 C. W. N. 770; 12 Bom. L. R. 504; *Samat v. Amra* (1882), 6 Bom. 394, at p. 397; *Krishnaji Vyanktesh v. Pandurang* (1875), 12 Bomb. H. C. 65; *Parmappa v. Shiddappa* (1906), 30 Bom. 607; 8 Bom. L. R. 685.

¹ Chap. iv. s. viii. para. 16; *Samat v. Amra* (1882), 6 Bom. 394, at p. 397.

² Chap. iv. s. viii. para. 20.

³ See *post*, p. 378.

⁴ Sarvadhikari's "Law of Inheritance," p. 921 (see also p. 922). See *Sham Narain v. Court of Wards* (1873), 20 W. R. C. R. 197, at pp. 200, 201; "Mitakshara," chap. ii. s. ix. para. 7.

⁵ Sarvadhikari's "Law of Inheritance," p. 922; "Mitakshara," chap. ii. s. ix. para. 7; see *post*, pp. 398, 399.

⁶ *Ante*, pp. 33, 353, 354.

⁷ *Ante*, pp. 59, 60.

⁸ *Babu Lal v. Nanku Ram* (1894), 22 Calc. 339, at p. 345.

⁹ *Ante*, p. 33.

¹⁰ "Mitakshara," chap. ii. s. iv. para. 7; "Vyavahara Mayukha," chap. iv. s. viii. para. 17; "Viramitrodaya" (G. C. Sircar's translation), p. 195.

¹¹ *Samat v. Amra* (1882), 6 Bom. 394, at p. 397; "Mitakshara," chap. ii. s. iv. paras. 5-7.

¹² See Sarvadhikari's "Hindu Law of Inheritance," pp. 927, 928.

¹³ Chap. iv. s. viii. paras. 16, 18, 20.

¹⁴ *Chandika Bakhsh v. Muna Kuar* (1902), 29 I. A. 70; 24 All. 273; 6 C. W. N. 425; 4 Bom. L. R. 376; "Vyavahara Mayukha," chap. iv. s. viii. para. 17.

The brother's son ends what is generally known as the 'compact series' of heirs according to the "Mitakshara."¹

11. Brother's son's son (unsettled).²

Brother's
son's son.

The brother's son's son is not mentioned in the "Mitakshara," and his place under the Mitakshara system is not settled. The Allahabad High Court³ prefers him to the paternal uncle's son,⁴ and a similar view was entertained by the Bengal Sudder Court in a case governed by the Mithila law,⁵ but the Madras High Court prefers the paternal uncle's son,⁶ and this is Golap Chander Sastri's view.⁷

The list of *gotraja sapindas* in the "Mitakshara" is apparently not exhaustive.⁸

It is submitted that the proper place of the brother's son's son is after the brother's son.

Relationship
of half blood.

According to the Bombay authorities, neither the "Mitakshara" nor the "Mayukha" makes any distinctions between relations of the whole blood and relations of the half blood, except in the case of brothers and sons of brothers,⁹ but the Allahabad High Court¹⁰ has held that the distinction between the whole and the half blood extends to the descendants of the grandfather, it may be to the fourteenth degree, but certainly to the case before them. In that case a grandson of a half brother of the great grandfather of the propositus was postponed to a grandson of a whole brother of such great grandfather. Sastri G. C. Sircar¹¹ says: "The preference based upon connection by whole blood, applies to all

¹ Chap. ii. s. v. para. 2; *Mohandas v. Krishnabai* (1881), 5 Bom. 597, at p. 602.

² *Oorhya Koor (Mussamut) v. Rajoo Nye Sookool* (1870), 14 W. R. C. R. 208; *Kureem Chand Gurain v. Odung Gurain* (1866), 6 W. R. C. R. 158.

³ *Kalian Rai v. Ram Chandar* (1910), 24 All. 128. "As a deceased person's own great grandson inherits before his parents, so it may not be unreasonable to hold that his father's great grandson inherits before his grandfather," *Bhattacharya's "Hindu Law,"* 2nd ed., p. 444. See "*Vyavastha Chandrika*," vol. i. p. 178, note †. *Varadaraja* (Burnell's translation, p. 36) admits him after the brother's son. In the table of succession, compiled by Mr. Rama Row, at p. 115 of *Cunningham's Digest*, a brother's son's son is placed after a brother's son. The spiritual principle would give him this place (see *ante*, pp. 361, 362), *Sarvadhikari's "Law of Inheritance,"* p. 467.

⁴ *Post*, p. 378.

⁵ *Sumbhoodutt Singh v. Jhotee Singh*, Ben. S. D. A., 1855, p. 369, at p. 384.

⁶ *Suraya Bhukta v. Lakshminarasamma* (1882), 5 Mad. 291. See "*Smriti Chandrika*," chap. xi. s. v. para. 10. *Elberling*, p. 78.

⁷ "*Hindu Law*," 3rd ed., pp. 260, 261.

⁸ See *Lallubhai Bapubhai v. Mankuvarbai* (1876), 2 Bom. 388, at p. 433.

⁹ *Samat v. Amra* (1882), 6 Bom. 394, at p. 397; *Vithalrao Krishna Vinchurkar v. Ramrao Krishna Vinchurkar* (1899), 24 Bom. 317; 2 Bom. L. R. 139. See *Saguna v. Sadashiv* (1902), 26 Bom. 710, at p. 715; 4 Bom. L. R. 527. As to a mother's half brother, see *Muthuswami Mudaliyar v. Sunambedu Muthukumaraswami Mudaliyar* (1896), 23 I. A. 83, at p. 91; 19 Mad. 405, at p. 410.

¹⁰ *Suba Singh v. Sarafraz Kunwar* (1896), 19 All. 215.

¹¹ "*Hindu Law*," 3rd ed., p. 259.

collateral relations of equal degree; propinquity being the principle of the order of succession, a relation of the full blood by reason of his propinquity excludes a relation of the same degree who is of the half blood."

It is quite clear that a *sapinda* of the half blood is preferred to a more distant *sapinda* of the whole blood.¹

The other descendants of the father, namely the sister² and the sister's son, do not come in at this point under the Mitakshara school, as they are not *gotraja sapindas*. The sister's son succeeds as a *bandhu*.³ As to the rights of a sister in Bombay and Madras, see *post*, pp. 394, 395, 397, 398.

Grandparents of the Deceased and their Descendants to the Third Degree.

12. Father's mother.⁴

Grandmother.

After the brother's son the remaining *gotraja* heirs are only dealt with in the following paragraphs of the "Mitakshara." Chap. ii. s. v. para. 4. : "Here on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons." Para. 5: "On failure of the paternal grandfather's line, the paternal great grandmother, the great grandfather, his sons and their issue inherit. In this manner must be understood the succession of kindred belonging to the same general family and who are *sapindas*."⁵

This enumeration is not exhaustive.⁶ The "Subodhini"⁷ commenting on the words of the "Mitakshara," "On failure of the paternal grandfather's line, the paternal great grandmother, the great grandfather, his sons and their issue inherit," carries the enumeration a little further, viz. "the paternal great grandfather's mother, great grandfather's father, great grandfather's brothers and their sons. The paternal great grandfather's grandmother, great grandfather's grandfather, great grandfather's uncles and their sons."

In the Bombay Presidency the sister is placed between the father's mother and the father's father.⁸

¹ *Muthuswami Mudaliyar v. Sunambedu Muthukumaraswami Mudaliyar* (1896), 23 I. A. 83, at p. 91; 19 Mad. 405, at p. 410; *Kesri v. Ganga Sahai* (1910), 32 All. 541.

² *Julessur Kooer v. Uggur Roy* (1882), 9 Calc.; 12 C. L. R. 725 460; *Jagat Narain v. Sheo Das* (1883), 5 All. 311. The question was raised but not decided in *Goolab Sing (Kooer) v. Kurun Sing (Rao)* (1871), 14 M. L. A. 176, at p. 194; 10 B. L. R. 1, at p. 8. See Punjab Customs, 17.

³ *Post*, p. 387.

⁴ *Gandhi Maganlal v. Jadab (Bai)* (1899), 24 Bom. 192, at p. 212; 1 Bom. L. R. 574; *Lallubhai Bapubhai*

v. Mankuvarbai (1876), 2 Bom. 388, at p. 432; "Mitakshara," chap. ii. s. v. para. 2; "Vyavahara Mayukha," chap. iv. s. viii. para. 8.

⁵ See *ante*, p. 362, note 3.

⁶ *Lallubhai Bapubhai v. Mankuvarbai* (1876), 2 Bom. 388, at p. 433.

⁷ (A commentary on the "Mitakshara" composed in the thirteenth century by Bishveshar Bhatta; Bhattacharya's "Hindu Law," 2nd ed., 33.) Chap. ii. s. 5, para. 5; Colebrooke's note to "Mitakshara," chap. ii. s. v. para. 5; *Lallubhai Bapubhai v. Mankuvarbai* (1876), 2 Bom. 388, at p. 433.

⁸ "Vyavahara Mayukha," chap. iv. s. viii. para. 19; *post*, pp. 394, 395.

- Grandfather.** 13. Father's father.¹
According to the "Mayukha" ² he takes equally with the half-brother.
- Paternal uncle.** 14. Father's brother.³
According to the "Mayukha," ⁴ the paternal great grandfather, the father's brother and the sons of the half-brother share the inheritance.
- His son.** 15. Father's brother's son.
According to some authorities,⁵ the brother's son's son would come immediately after the father's brother's son.
- His grandson.** 16. Father's brother's son's son ⁶ (unsettled).

The reasons which would place the brother's son's son before the father's mother, would place the father's brother's son's son in this position, but if the contrary view be accepted, the father's brother's son's son would come after the father's father's brother's son. Sastri G. C. Sircar ⁷ places the father's brother's son's son after the sixth descendant from the father.

/

Great Grandparents of the Deceased and their Descendants to the Third Degree.

- Great grand-mother.** 17. Father's father's mother.⁸
- Great grand-father.** 18. Father's father's father.⁹
- His son.** 19. Father's father's brother.¹⁰
- His grandson.** 20. Father's father's brother's son.¹¹

Immediately after him Sastri G. C. Sircar places the paternal grandparents of the fourth, fifth, and sixth degrees in ascent and their two male descendants.¹²

- His great grandson.** 21. Father's father's brother's son's son ¹³ (unsettled).

¹ "Mitakshara," chap. ii. s. v. paras. 4, 5; "Vyavahara Mayukha," chap. iv. s. viii. para. 20.

² Chap. iv. s. viii. para. 20; *ante*, p. 375.

³ "Mitakshara," chap. ii. s. v. para. 2. As to the preference of those of the whole blood, see *ante*, pp. 376, 377.

⁴ Chap. iv. s. viii. para. 20.

⁵ *Ante*, p. 376.

⁶ Cunningham's "Digest of Hindu Law," p. 115; Sarvadhikari's "Law of Inheritance," p. 654; *Kashibai v.*

Moreshwar Raghunath (1911), 35 Bom. 389; 13 Bom. L. R. 352.

⁷ "Hindu Law," 3rd ed., p. 362.

⁸ "Mitakshara," chap. ii. s. v. para. 5; *ante*, p. 377.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*; *Ganesh v. Waghu* (1903), 27 Bom. 610; 5 Bom. L. R. 581.

¹² "Hindu Law," 2nd ed., p. 261.

¹³ *Duroo Sing v. Rai Sing*, S. D. A. N. W. P. (1864), p. 521. See *ante*, p. 376.

REMOTE SAPINDA HEIRS.

Descendants of Deceased from the Fourth to the Sixth Degree.

- | | |
|---|----------------------|
| 22. Son's son's son's son. ¹ | Grandson's grandson. |
| 23. Son's son's son's son's son. ² | His son. |
| 24. Son's son's son's son's son's son. ³ | His grandson. |

Descendants of Father of Deceased from the Fourth to the Sixth Degree.

- | | |
|---|---------------------------|
| 25. Brother's son's son's son. ⁴ | Brother's great grandson. |
| 26. Brother's son's son's son's son. ⁵ | His son. |
| 27. Brother's son's son's son's son's son. ⁶ | His grandson. |

Descendants of Grandfather of Deceased from Fourth to Sixth Degree.

- | | |
|--|-------------------------|
| 28. Father's brother's son's son's son. | Uncle's great grandson. |
| 29. Father's brother's son's son's son's son. ⁷ | His son. |
| 30. Father's brother's son's son's son's son's son. ⁸ | His grandson. |

Descendants of Great Grandfather of Deceased from Fourth to Sixth Degree.

- | | |
|--|-------------------------------|
| 31. Father's father's brother's son's son's son. | Great uncle's son's grandson. |
| 32. Father's father's brother's son's son's son's son. | His son. |
| 33. Father's father's brother's son's son's son's son's son. | His grandson. |

Ancestors of Deceased in the Fourth Degree and their Descendants to the Third Degree.⁹

- | | |
|--|----------------------------|
| 34. Father's father's father's mother. | Grandfather's grandmother. |
| 35. Father's father's father's father. | Grandfather's grandfather. |
| 36. Father's father's father's father's son. | His son. |
| 37. Father's father's father's father's son's son. | His grandson. |
| 38. Father's father's father's father's son's son's son. | His great grandson. |

¹ *Ram Singh (Bhyah) v. Ugur Singh (Bhyah)* (1870), 13 M. L. A. 373; 5 B. L. R. 293; 14 W. R. P. C. 1. It is scarcely possible that so remote a descendant would be born at the time of the death of the propositus.

² *Ibid.*

³ *Ibid.*

⁴ *Venilal v. Parjaram* (1894), 20 Bom. 173. See *ante*, pp. 376, 378.

⁵ See *ante*, pp. 376, 378.

⁶ *Ibid.*

⁷ See, however, Sircar's "Hindu Law," 3rd ed., 262.

⁸ *Ibid.*

⁹ *Ante*, p. 365.

Ancestors of Deceased in Fifth Degree and their Descendants to the Third Degree.¹

- | | |
|---------------|--|
| Grandfather's | 39. Father's father's father's father's mother. |
| grandfather's | 40. Father's father's father's father's father. |
| mother. | 41. Father's father's father's father's father's son. |
| Grandfather's | 42. Father's father's father's father's father's son's son. |
| great grand- | 43. Father's father's father's father's father's son's son's |
| father. | son. ² |
| His son. | |
| His grandson. | |
| His great | |
| grandson. | |

Ancestors of Deceased in Sixth Degree, and their Descendants to the Third Degree.³

- | | |
|----------------|---|
| Great grand- | 44. Father's father's father's father's father's mother. |
| father's great | 45. Father's father's father's father's father's father. ³ |
| grandmother. | 46. Father's father's father's father's father's father's son. |
| Great grand- | 47. Father's father's father's father's father's father's son's |
| father's great | son. |
| grandfather. | |
| His son. | |
| His grandson. | |
| His great | 48. Father's father's father's father's father's father's son's |
| grandson. | son's son. |

Descendants from Fourth to Sixth Degree of Ancestors in Fourth Degree.

- | | |
|---------------|---|
| Grandfather's | 49. Father's father's father's father's son's son's son's son. |
| grandfather's | 50. Father's father's father's father's son's son's son's son's |
| grandson's | son. |
| grandson. | |
| His son. | |
| His grandson. | 51. Father's father's father's father's son's son's son's son's |
| | son's son. |

Descendants from Fourth to Sixth Degree of Ancestors in Fifth Degree.

- | | |
|-----------------|--|
| Grandfather's | 52. Father's father's father's father's father's son's son's |
| great grand- | son's son. |
| father's grand- | 53. Father's father's father's father's father's son's son's |
| son's grand- | son's son's son. ⁴ |
| son. | |
| His son. | |
| His grandson. | 54. Father's father's father's father's father's son's son's |
| | son's son's son's son. |

¹ Ante, p. 365.

² *Jeebnath Singh (Thakoor) v. Court of Wards* (1875), 2 I. A. 163; 15 B. L. R. 190; 23 W. R. C. R. 409; S. C. in court below (1870), 5 B. L. R. 442; 14 W. R. P. C. 117.

³ Ante, p. 365.

⁴ *Ram Singh (Bhyah) v. Ugur Singh (Bhyah)* (1870), 13 M. I. A. 373; 5 B. L. R. 293; 14 W. R. P. C. 1.

55. Father's father's father's father's father's son's Great grand-
son's son's son. father's great
56. Father's father's father's father's father's father's son's grandfather's
son's son's son's son. grandson.
57. Father's father's father's father's father's father's son's His son.
son's son's son's son's son.

As pointed out by Mr. Mayne,² no other writer has followed this list. It has had no support from the Courts.

⁶ Pp. 117, 118.

2. Seven generations from the brother's son's son's son's son's son exclusive.

3. Seven generations from the father's brother's son's son's son's son's son exclusive.

4. Seven generations from the father's father's brother's son's son's son's son's son exclusive.

5. Seven generations from the father's father's father's father's son's son's son's son's son's son exclusive.

6. Seven generations from the father's father's father's father's father's son's son's son's son's son's son's son.

7. Seven generations from the father's father's father's father's father's father's son's son's son's son's son's son's son.

8. Mother of father's father's father's father's father's father.

9. Father's father's father's father's father's father's father.

10. His male descendants up to thirteen generations.

11. Mother of father's father's father's father's father's father's father.

12. Father's father's father's father's father's father's father's father.

13. His male descendants up to thirteen generations.

Similarly up to thirteenth grandfather exclusive.

/

BANDHUS.

Bandhus.

Failing all *sagotra sapindas* and *samanodakas*,¹ the inheritance according to the Mitakshara system passes to the cognate *sapindas*, who are called *bandhus* or *bhinnagotra sapindas*, i.e. "springing from a different family, and connected by common corporeal particles, or by consanguinity,"² through females.³

With the exception of the daughter's son, who succeeds under special texts,⁴ no cognate can succeed while there is any agnate down to the last *samanodaka* alive and capable of taking.⁵

Inheritance of bandhus.

The difficulty in laying down any definite rules as to the inheritance of *bandhus* arises from the lack of information in the "Mitakshara" on the subject. Chapter II. Section VI.,

¹ *Jeebnath Singh (Thakoor) v. (1892), 16 Mad. 23.*

Courts of Wards (1875), 2 I. A. 163;

15 B. L. R. 190; 23 W. R. C. R. 409;

Ram Singh (Bhyah) v. Ugur Singh

(Bhyah) (1870), 13 M. I. A. 373; 5

B. L. R. 293; 14 W. R. P. C. 1;

Narain Kuar v. Chandi Din (1886),

9 All. 467; Digdayi (Muset) v.

Bhatan Lall (1869), 5 B. L. R. 448,

note; 11 W. R. C. R. 300; "Mitak-

shara," chap. ii. s. vi. para. 1.

² *Babu Lal v. Nanku Ram (1894),*

22 Cal. 339, at p. 343.

³ *Muttusami v. Muttukumarasami*

⁴ *Ante, p. 373.*

⁵ *Narain Kuar v. Chandi Din*

(1886), 9 All. 467; Ram Singh

(Bhyah) v. Ugur Singh (Bhyah)

(1870), 13 M. I. A. 373, at p. 390;

5 B. L. R. 293; at p. 302; 14 W. R.

P. C. 1, at p. 3. See Rutcheputty

Dutt Jha v. Rajunder Narain Rae

(1839), 2 M. I. A. 133 (a Mithila

case); Goolab Sing (Koor) v. Rao

Kurun Sing (1871), 14 M. I. A. 176;

10 B. L. R. 1.

para. 1, which contains all that is said in the Mitakshara with regard to what *bandhus* inherit, is as follows :—

1. “ On failure of Gentiles, the cognates are heirs. Cognates are of three kinds ; related to person himself, to his father, or to his mother as is declared by the following text. ‘ The sons of his own father’s sister, the sons of his own mother’s sister, and the sons of his own maternal uncle, must be considered as his own cognate kindred. The sons of his father’s paternal aunt, the sons of his father’s maternal uncle, must be deemed his father’s cognate kindred. The sons of his mother’s paternal aunt, the sons of his mother’s maternal aunt, and the sons of his mother’s maternal uncle must be reckoned his mother’s cognate kindred.’ ” ¹

This enumeration is only illustrative and is not exhaustive.²

The following propositions have been laid down by Pundit Rajkumar Sarvadhikari ³ :— *Bandhus* who inherit.

“ I. A *bandhu* is a cognate *sapinda* within four degrees counting (1) from the deceased himself, in ascent or descent ; (2) from any one of the four immediate ancestors of the deceased.” ⁴

“ II. The right of inheritance accrues to a *bandhu* if the late owner and the person claiming the heritable right were related as *sapindas* to each other, either directly through themselves or through their mothers or fathers. *Sapinda* relationship must be mutual.

“ In other words, a heritable *bandhu* is a cognate *sapinda* within four degrees, counting from—

- “ 1. The deceased in ascent or descent.
- “ 2. Deceased’s paternal ancestor within four degrees.
- “ 3. Deceased’s maternal ancestor within four degrees.

¹ See *Amrita Kumari Debi v. Lakhinarayan Chuckerbutty* (1868), 2 B. L. R. F. B. 28, at p. 37 ; 10 W. R. F. B. 76, at p. 77.

² *Girdhari Lall Roy v. Bengal Government* (1868), 12 M. I. A. 448 ; 1 B. L. R. P. C. 44 ; 10 W. R. P. C. 31 ; *Muthuswami Mudaliyar v. Sunambedu Muthukumaraswami Mudaliyar* (1896), 23 I. A. 83 ; 19 Mad. 405 ; *Amrita Kumari Debi v. Lakhinarayan Chuckerbutty* (1868), 2 B. L. R. F. B. 28 ; 10 W. R. F. B. 76 ; *Umaid Bahadur v. Udoi Chand* (1880), 6

Calc. 119 ; 6 C. L. R. 500 ; *Babu Lal v. Nanku Ram* (1894), 22 Calc. 339, at p. 344 ; *Ratnasubbu Chetti v. Ponnappa Chetti* (1882), 5 Mad. 69.

³ “ Hindu Law of Inheritance,” pp. 703–707.

⁴ The word “ancestors” includes here : (1) ancestors of the deceased *ex parte paternâ* ; (2) ancestors of the deceased *ex parte maternâ* ; (3) ancestors of the father of the deceased *ex parte maternâ* ; (4) ancestors of the mother of the deceased *ex parte maternâ*. *Ibid.*, p. 704.

"4. Deceased's father's maternal ancestor within four degrees.

"5. Deceased's mother's maternal ancestor within four degrees.

"N.B.—The word 'five' is to be substituted for 'four' in the case of father's *bandhus*. If the deceased or his ancestor be related through father's mother, then *five* degrees instead of four should be counted in both directions. Thus grandson's daughter's grandson is related to the deceased (or his paternal ancestor) through father's mother."

Rule of
exclusion.

"III. Rule of exclusion :—

"1. The cognate descendant of each of these classes is excluded from inheritance when (i.) the deceased or (ii.) the deceased's ancestor does not belong to—

"(a) His maternal grandfather's line.

"(b) His father's ditto.

"(c) His mother's ditto.

"2. Cognate ascendant of the deceased is excluded from inheritance when he does not belong to—

"(a) The deceased's maternal grandfather's line.

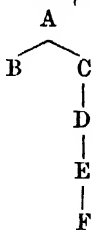
"(b) The deceased's father's ditto.¹

"(c) The deceased's mother's ditto."

Sapinda
relationship
must be
mutual.

A *sapinda* to be capable of inheriting must be so related to the late owner, that the late owner was also his *sapinda* either directly or through his father or mother, or in other words the *sapinda* relationship must be mutual.²

Among *gotraja sapindas*, sapindaship is always mutual, but this is not always the case amongst *bandhus*. In *Umaid Bahadur v. Udoi Chand*³ we find the following: Take for illustration :—



¹ As to the father's maternal grand-mother's line, see *post*, p. 385.

² *Babu Lal v. Nanku Ram* (1894), 22 Calc. 339, at p. 344; *Umaid Bahadur v. Udoi Chand* (1880), 6 Calc.

119, at pp. 127, 128; 6 C. L. R. 500, at p. 515; Sarvadhikari's "Hindu Law of Inheritance," p. 698.

³ (1880), 6 Calc. 119; 6 C. L. R. 500

"A is the common ancestor, B, his son, is the propositus. C, a daughter of A; D, her daughter, both dead; E is the son of D and has a son F. Now B and E are *sapindas* to each other, but not B and F. Although F is B's *sapinda* being "within six degrees of the common ancestor, yet B, not being a descendant of the line of the maternal grandfather, either of F or of his father and mother," is not F's *sapinda*, and therefore, "they are not *sapindas* to each other; but B being a *sapinda* of E through his mother they are *sapindas* of each other."

Mr. J. C. Ghose¹ makes the following remarks as to this decision:—"The decision proceeds upon a misapprehension of the meaning of the word '*sapinda*,' gives a new definition of it, and then defines *bandhus* as being *sapindas* who are descendants of the line of the maternal grandfather or of the father's or mother's maternal grandfather. There is, I am afraid, no foundation either in the Smritis or in the commentaries for this position according to which the descendants of the mother's maternal grandfather's daughter's daughter, who are removed by three *gotras*, should be *sapindas* and *bandhus*, and not the father's maternal grandmother's brother."

Bandhus are of three kinds, taking the inheritance in order, Kinds of
bandhus.
viz. :—

- (a) The cognate kindred of the deceased. These are called *Atma bandhus*.
- (b) His father's cognate kindred. These are called *Pitri bandhus*.
- (c) His mother's cognate kindred.² These are called *Matri bandhus*.

Some of these *bandhus* included in the Mitakshara system are not heirs according to the Bengal system.³

I. All *atma bandhus* precede *pitri bandhus*, and all *pitri bandhus* precede *matri bandhus*.⁴ Order of
succession

II. In each of these classes as between cognates related through the father of the deceased and those connected through his mother, preference is given to those related through his father.⁵

III. Subject to the above, the nearer line excludes the more remote.⁶

¹ "Hindu Law," 2nd ed., p. 152.

² "Mitakshara," chap. ii. s. vi. para. 2.

³ See Mayne's "Hindu Law," 7th ed., pp. 695, 696.

⁴ "Mitakshara," chap. ii. s. vi. para. 2; *Muthuswami Mudaliyar v. Sunambedu Muthukumaraswami* (1896),

23 I. A. 83; 19 Mad. 405; *Appandai Vathiyar v. Bagubali Mudaliyar* (1910), 33 Mad. 539.

⁵ *Sundrammal v. Rangasami Mudaliar* (1894), 18 Mad. 193.

⁶ *Balusami Pandithar v. Narayana Ravi* (1897), 20 Mad. 342; *Krishna Ayyangar v. Venkatarama Ayyangar*

Thus the son of a sister's son comes before the son of a maternal uncle.¹

IV. Subject to the above rules preference is to be given to the claimant, between whom and the stem there intervenes one female link, to that claimant who is separated from the stem by two such links.²

Thus a daughter's son's son will be preferred to a daughter's daughter's son.³

This ground of distinction in favour of a person will not apply when he competes with one of a nearer line.⁴

The intervention of two females in the line of inheritance is not a bar.⁵

The following order of succession is to be found in Dr. Jogendranath Bhattacharya's "Hindu Law,"⁶ and Pundit Rajkumar Sarvadhikari's "Hindu Law of Inheritance."⁷

The decision in *Muttusami v. Muttukumarasami*⁸ points out instances in which that order is inconsistent with the "Mitakshara," but the lists given by those authors are most valuable and complete.

In regard to the succession of cognates, there is no difference between the rules laid down in the "Mitakshara" and the "Mayukha."⁹

Order of
inheritance.
Atma bandhus.

Atma bandhus are (1) related through daughters of the family, (2) related through the mother of the deceased.

The former class come first. Of them the descendants of the deceased are preferred.

We have seen that the daughter's son, although a *bandhu*, has a special place among the *gotraja sapindas*.¹⁰

Following the above rules, the order of inheritance is as follows :—

(1905), 29 Mad. 115; *Muttusami v. Muttukumarasami* (1892), 16 Mad. 23, at p. 30 (affirmed on appeal (1896), 23 I. A. 83; 19 Mad. 405).

¹ *Balusami Pandithar v. Narayana Rau* (1897), 20 Mad. 342.

² *Tirumalachariar v. Andal Ammal* (1907), 30 Mad. 406.

³ *Ibid.*

⁴ *Krishna Ayyangar v. Venkata-rama Ayyangar* (1905), 29 Mad. 115.

⁵ *Parot Bapalal Sevakram v. Mehta Harilal Surajram* (1894), 19 Bom. 631, at p. 634; *Umaid Bahadur v.*

Udoi Chand (1880), 6 Calc. 119; 6 C. L. R. 500; *Venkatagiri v. Chandru* (1899), 23 Mad. 123; *Krishna Ayyangar v. Venkatarama Ayyangar* (1905), 29 Mad. 115.

⁶ 2nd ed., pp. 460-462.

⁷ Pp. 707 *et seq.*

⁸ (1892), 16 Mad. 23; affirmed on appeal (1896), 23 I. A. 83; 19 Mad. 405.

⁹ *Parot Bapalal Sevakram v. Mehta Harilal Surajram* (1894), 19 Bom. 631.

¹⁰ *Ante*, p. 373.

Sons of Daughters of the Family.

1. The son's daughter's son.
2. The son's son's daughter's son.
3. Sister's son.¹

Sons of
daughters of
the family.

The *bandhus* of the deceased connected with him through his father have preference over those connected through his mother.²

A step-sister's son is entitled to inherit.³

4. Brother's daughter's son.⁴
5. Brother's son's daughter's son.
6. Father's father's daughter's son.⁵
7. Father's father's son's daughter's son.
8. Father's father's son's son's daughter's son.

According to both Dr. Jogendranath Bhattacharya,⁶ and Pundit Rajkumar Sarvadhikari,⁷ the great grandfather's daughter's son⁸ will next succeed as an *atma bandhu*, but he is described in the "Mitakshara" as a *pitri bandhu*,⁹ and has therefore been held to be such.¹⁰ It would follow that the great grandfather's son's daughter's son,¹¹ the great grandfather's son's son's daughter's son,¹² the great great grandfather's daughter's son,¹³ and his son's daughter's son¹⁴ and son's son's daughter's son¹⁵ cannot

¹ *Amrita Kumari Debi v. Laihnarayan Chuckerbutty* (1868), 2 B. L. R. F. B. 28; 10 W. R. F. B. 76; *Chelikani Tirupati Royanagaru v. Vencata Gopala Narasimha Rau Bahadur (Rajah Suraneni)* (1871), 6 Mad. H. C. 278; *Srinivasa Ayyangar v. Rengasami Ayyangar* (1879), 2 Mad. 304; *Raghunath Kuari v. Munnar Mier* (1897), 20 All. 191; *Naraini Kuar v. Chandi Din* (1886), 9 All. 487; *Lakshmanammal v. Tiruvengada Mudali* (1882), 5 Mad. 241. For a history of the vindication of the right of a sister's son to succeed as a *bandhu*, see Mayne's "Hindu Law," 7th ed., pp. 780-783. The question was treated as an open one in *Kurun Sing (Rao) v. Mahomed Fyz Ali Khan (Nawab)* (1871), 14 M. I. A. 187, at p. 195; 10 B. L. R. P. C. 7, at pp. 9, 10.

² *Saguna v. Sadashiv* (1902), 26 Bom. 710, at p. 715; 4 Bom. L. R. 527.

³ *Subbaraya v. Kylasa* (1891), 15 Mad. 300; *Sreenarain Rai v. Bhya*

Jha (1812), 2 Ben. Sel. R. 33 (new edition, 29); see *ante*, pp. 376, 377.

⁴ *Doorga Bibee Mussamut v. Janaki Pershad* (1872), 10 B. L. R. 341; 18 W. R. C. R. 331.

⁵ "Mitakshara," chap. ii. s. vi. para. 1; *ante*, p. 383; *Tahaldai Kumri v. Gaya Pershad Sahu* (1909), 37 Cal. 214; 14 C. W. N. 443.

⁶ "Hindu Law," 2nd ed., p. 460.

⁷ "Hindu Law of Inheritance," p. 713.

⁸ *Post*, p. 391.

⁹ *Ante*, p. 383.

¹⁰ *Muthuswami Mudaliyar v. Sunambedu Muthukumaraswami Mudaliyar* (1890), 23 I. A. 83; 10 Mad. 405; S. C. in court below (1892), 16 Mad. 23; *Krishna Ayyangar v. Venkatarama Ayyangar* (1905), 29 Mad. 115.

¹¹ *Post*, p. 391.

¹² *Ibid.*

¹³ *Post*, p. 392.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

be classed as *atma bandhus* although they are so classed by those two authors.

Sons of Daughter's Sons of the Family.

Sons of
daughter's
sons of the
family.

Next come, according to Dr. Jogendranath Bhattacharya ¹ and Pundit Rajkumar Sarvadhikari, ² those of the *atma bandhus ex parte paternâ* to whom the deceased was a *pitri bandhu*, viz.—

9. Daughter's son's son ³ and

10. Son's daughter's son's son.

Here Pundit Rajkumar Sarvadhikari inserts the son's son's daughter's son's son. ⁴

11. Father's daughter's son's son. ⁵

The sister's son's son's son is not an heir. ⁶

12. Brother's daughter's son's son.

13. Father's father's daughter's son's son.

14. Father's father's son's daughter's son's son.

The above two learned authors also include here the following, viz. the great grandfather's daughter's son's son, ⁷ great grandfather's son's daughter's son's son, ⁸ the great great grandfather's daughter's son's son, ⁹ and great great grandfather's son's daughter's son's son, ¹⁰ but having regard to what has been held with regard to the great grandfather's daughter's son, ¹¹ it seems to be impossible to place these among the *atma bandhus*.

Sons of Daughter's Daughters of the Family.

Sons of
daughter's
daughters of
the family.

Next come, according to Dr. Jogendranath Bhattacharya ¹² and Pundit Rajkumar Sarvadhikari, ¹³ those of the *atma bandhus ex parte paternâ* to whom the deceased was *matri bandhu*, viz.—

¹ "Hindu Law," 2nd ed., p. 460.

² "Hindu Law of Inheritance," p. 714.

³ *Tirumalachariar v. Andal Ammal* (1907), 30 Mad. 406; *Krishnayya v. Piramma* (1887), 11 Mad. 287; *Shobarat Kuari v. Bhagwati Prasad* (1895), 17 All. 523.

⁴ "Hindu Law of Inheritance," p. 714.

⁵ *Balusami Pandithar v. Narayana*

Rau (1897), 20 Mad. 342.

⁶ *Lowji v. Mithabai* (1900), 2 Bom. L. R. 842.

⁷ *Post*, p. 392.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ante*, p. 387.

¹² "Hindu Law," 2nd ed., p. 460.

¹³ "Hindu Law of Inheritance," p. 714.

15. Daughter's daughter's son.¹
16. Son's daughter's daughter's son.
17. Father's daughter's daughter's son.²
18. Father's son's daughter's daughter's son.
19. Grandfather's daughter's daughter's son.³
20. Grandfather's son's daughter's daughter's son.

The last-named authors also include in the same class the following, viz. great grandfather's daughter's daughter's son,⁴ great grandfather's son's daughter's daughter's son,⁵ the great great grandfather's daughter's daughter's son,⁶ and the great great grandfather's son's daughter's daughter's son,⁷ but having regard to what has been held with regard to the great grandfather's daughter's son, it seems impossible to place these among the *atma bandhus*.

We now come to the *atma bandhus ex parte maternâ*.

21. Mother's father.⁸

*Atma bandhus
ex parte
materna.*

Then come first those to whom the deceased is *atma bandhu ex parte paternâ*, viz.—

22. Mother's brother.⁹
23. Mother's brother's son.¹⁰

To whom
deceased was
*atma bandhu
ex parte
paternâ.*

In a Jain case (*Appandai Vathiyar v. Bagubali Mudaliyar* (1910), 33 Mad. 439) the Madras High Court on the authority of the "Smriti Chandrika" (*ante*, p. 14), chap. xi. s. 5, para. 15, the "Sarasvati Vilasa" (*ante*, p. 15), para. 595, and the Vyavahara Mayukha (*ante*, pp. 15, 16), chap. iv. s. 9, para. 22, preferred the mother's sister's son to the mother's brother's son. The question depends upon whether the persons named in those texts and in the above para. of the "Mitakshara" take in the order named. If they do, and they apparently do so, the above decision is applicable wherever the Mitakshara system applies.

¹ *Tirumalachariar v. Andal Ammal* (1907), 30 Mad. 406; *Ajudhia v. Ram Sumer Misir* (1909), 31 All. 454; *Rampal Thakur v. Pan Mati Padain* (1910), 32 All. 640.

² *Umaid Bahadur v. Udoi Chand* (1880), 6 Cal. 119; 6 C. L. R. 500.

³ *Parot Bapalal Sevakram v. Mehta Harilal Surajram* (1894), 19 Bom. 631; *Venkatagiri v. Chandru* (1899), 23 Mad. 123; *Krishna Ayyangar v. Venkatarama Ayyangar* (1905), 29 Mad. 115.

⁴ *Post*, p. 392.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Chinnammal v. Venkatachala* (1891), 15 Mad. 421.

⁹ *Muthuswami Mudaliyar v. Sunambedu Muthukumaraswami Mudaliyar* (1896), 23 I. A. 83; 19 Mad. 405; "Viramatrodaya" (G. C. Sircar's translation), p. 200, referred to in *Gridhari Lall Roy v. Bengal Government* (1868), 12 M. I. A. 448, at pp. 466, 467; 1 B. L. R. P. C. 44, at pp. 52, 53; 10 W. R. P. C. 31, at p. 34; *Saguna v. Sadashiv* (1902), 26 Bom. 710; 4 Bom. L. R. 527; *Narasimma v. Mangammal* (1889), 13 Mad. 10; *Mohandas v. Krishnabai* (1881), 5 Bom. 597.

¹⁰ "Mitakshara," chap. ii. s. vi., para. 1; *ante*, p. 383; *Balusuami Pandithar v. Narayana Rau* (1897), 20 Mad. 342.

24. Mother's brother's son's son.
- (25. Mother's father's father.¹)
26. Mother's father's brother.
27. Mother's father's brother's son.
28. Mother's father's brother's son's son.²
- (29. Mother's grandfather's father.)
30. Mother's grandfather's brother.
31. Mother's grandfather's brother's son.
32. Mother's grandfather's brother's son's son. .

Dr. Jogendranath Bhattacharya³ adds here the great great grandson of the mother's father, mother's father's father and mother's father's father's father in order. These are placed by Pundit Rajkumar Sarvadhikari⁴ after the maternal grandfather's grandson's daughter's son.⁵

Then come *atma bandhus ex parte maternâ* to whom the *propositus* is *atma bandhu ex parte maternâ*.

They are all daughter's sons.

33. The mother's sister's son.⁶
34. The maternal grandfather's son's daughter's son.
35. The maternal grandfather's son's son's daughter's son.
- Then, according to Pundit Rajkumar Sarvadhikari, come—
36. Maternal grandfather's great great grandson.
37. Maternal great grandfather's great great grandson.
38. Maternal great great grandfather's great great grandson.

As to Dr. Jogendranath Bhattacharya's view, see above.

Then, according to Dr. Jogendranath Bhattacharya⁷ and Pundit Rajkumar Sarvadhikari,⁸ follow in the same class the daughter's son, son's daughter's son and son's son's daughter's son of the maternal great grandfather,⁹ and the daughter's son, son's daughter's son and son's son's daughter's son of the maternal great great grandfather,¹⁰ but as the first of these is mentioned in the "Mitakshara" as a *matri bandhu*¹¹ it follows that the subsequent ones also are *matri bandhus*.

¹ See *Krishnayya v. Pichammu* (1887), 11 Mad. 287.

² *Ratnasubbu Chetti v. Ponnappa Chetti* (1882), 5 Mad. 69.

³ "Hindu Law," 2nd ed., p. 460.

⁴ "Hindu Law of Inheritance," p. 716.

⁵ Below.

⁶ *Gunesh Chunder Roy v. Nil Komul Roy* (1874), 22 W. R. C. R. 264 ; *Chamanlal Maganlal (Sha) v. Doshi*

Ganesh Motichand (1904), 28 Bom. 453 ; 6 Bom. L. R. 460 ; see *Mohandas v. Krishnabai* (1881), 5 Bom. 597 ; *Appandai Vathiyar v. Bagubali Mudaliyar* (1910), 33 Mad. 439, *ante*, p. 389.

⁷ "Hindu Law," 2nd ed., p. 460.

⁸ "Hindu Law of Inheritance," p. 716.

⁹ *Post*, p. 393.

¹⁰ *Ibid*.

¹¹ *Ante*, p. 383.

To whom
deceased was
atma bandhu
ex parte
maternâ.

Then come the *atma bandhus ex parte maternâ* to whom the deceased was *pitri bandhu*. To whom deceased was *pitri bandhu*.

They are all sons of daughter's sons.

39. Mother's sister's son's son.¹

40. Mother's brother's daughter's son's son.

Then follow in the same class, according to Dr. Jogendranath Bhattacharya² and Pundit Rajkumar Sarvadhikari,³ daughter's son's sons,⁴ and son's daughter's son's sons⁵ of the maternal great grandfather, and the daughter's son's son,⁶ and the son's daughter's son's son⁷ of the maternal great great grandfather. As the maternal great grandfather's daughter's son is mentioned in the "Mitakshara" as a *matri bandhu*,⁸ it follows that his son, and consequently those following his son, are not *atma bandhus*.

Then follow the *atma bandhus ex parte maternâ* to whom the deceased was *matri bandhu*. To whom deceased was *matri bandhu*.

These are sons of daughters' daughters.

41. Mother's sister's daughter's son.

42. Mother's brother's daughter's daughter's son.

Then follow⁹ in the same class, according to Dr. Jogendranath Bhattacharya⁹ and Pundit Rajkumar Sarvadhikari,¹⁰ the daughter's daughter's son and son's daughter's daughter's son of the maternal great grandfather, and of the maternal great great grandfather,¹¹ but as the son of the maternal great grandfather's daughter is classed as a *matri bandhu*,¹² it is apparent that the daughter's daughter's son of such maternal great grandfather and the others cannot be classed as *atma bandhus*.

We next come to the *pitri bandhus*. The list will apparently *Pitri bandhus* commence with those already referred to,¹³ viz.—

43. Great grandfather's daughter's son.¹⁴

44. Great grandfather's son's daughter's son.¹⁵

45. Great grandfather's son's son's daughter's son.

¹ *Vijl. (Bas) v. Prabhalakshmi (Bas)* (1907), 9 Bom. L. R. 1129.

² "Hindu Law," 2nd ed., p. 460.

³ "Hindu Law of Inheritance," p. 716.

⁴ *Post*, p. 393.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ante*, p. 383.

⁹ "Hindu Law," 2nd ed., p. 461.

¹⁰ "Hindu Law of Inheritance," p. 716.

¹¹ *Post*, p. 393.

¹² *Ante*, p. 383.

¹³ *Ante*, pp. 387, 388.

¹⁴ *Ante*, p. 387. "Mitakshara," chap. II. s. vi. para. 1; *Muthuswami Mudaliyar v. Sunambedu Muthukumaraswami Mudaliyar* (1896), 23 I. A. 83; 19 Mad. 405; S. C. in court below (1892), 16 Mad. 23. See *Krishna Ayyangar v. Venkatarama Ayyangar* (1905), 29 Mad. 615.

¹⁵ See *K. Kissen Lala v. Javallah Prasad Lala* (1867), 2 Mad. H. C. 346.

46. Great great grandfather's daughter's son.
47. Great great grandfather's son's daughter's son.
48. Great great grandfather's son's son's daughter's son.¹
49. Great grandfather's daughter's son's son.²
50. Great grandfather's son's daughter's son's son.
51. Great great grandfather's daughter's son's son.
52. Great great grandfather's son's daughter's son's son.
53. Great grandfather's daughter's daughter's son.
54. Great grandfather's son's daughter's daughter's son.
55. Great great grandfather's daughter's daughter's son.
56. Great great grandfather's son's daughter's daughter's son.

Then follow the *pitri bandhus* to whom the deceased was

atma bandhu ex parte paternâ.

57-59. The son,³ grandson. and great grandson of the father's maternal grandfather.

60-62. The son, grandson, and great grandson of the father's maternal great grandfather.

63-65. The son, grandson, and great grandson of the father's maternal great great grandfather.

At this point Dr. Jogendranath Bhattacharya⁴ puts in the great great grandson of the father's three maternal ancestors in order, but according to Pundit Rajkumar Sarvadhikari⁵ they would apparently come after the grandson's daughter's son of the father's maternal great great grandfather.⁶

Then follow the *pitri bandhus* to whom the deceased was

atma bandhu ex parte maternâ.

66-68. The daughter's son, the son's daughter's son, and the grandson's daughter's son of the father's maternal grandfather.

69-71. The daughter's son, the son's daughter's son, and the grandson's daughter's son of the father's maternal great grandfather.

72-74. The daughter's son, the son's daughter's son, and the grandson's daughter's son of the father's maternal great great grandfather.

Those to
whom
deceased was
atma bandhu
ex parte
paternâ.

Those to
whom
deceased was
atma bandhu
ex parte
maternâ.

¹ *Manik Chand Golecha v. Jagat Settani Prankumari Bibi* (1889), 17 Calo. 518.

² *Sethurama v. Ponnammal* (1888), 12 Mad. 155; *Chamanlal Maganlal (Sha) v. Doshi Ganesh Motchand* (1904), 28 Bom. 453; 6 Bom. L. R. 460.

³ *Gridhari Lall Roy v. Bengal Government* (1868), 12 M. I. A. 448; 1 B. L. R. P. C. 45; 10 W. R. P. C. 31.

⁴ "Hindu Law," 2nd ed., p. 461.

⁵ "Hindu Law of Inheritance," p. 717.

⁶ See below.

75, 76, 77. Great grandson of father's mother's father, of his father, and of his grandfather.

Now come the *pitri bandhus* to whom the deceased was *pitri bandhu*, viz.—

Those to whom deceased was *pitri bandhu*.

78, 79. Daughter's grandson, and son's daughter's grandson of the father's maternal grandfather.

80, 81. Daughter's grandson and son's daughter's grandson of the father's maternal great grandfather.

Then come the *pitri bandhus* to whom the deceased was *matri bandhu*, viz.—

Those to whom deceased was *matri bandhu*.

82, 83. Daughter's daughter's son and son's daughter's daughter's son of the father's maternal grandfather.

84, 85. Daughter's daughter's son and son's daughter's daughter's son of the father's maternal great grandfather.

Then come the *matri bandhus*. They apparently commence with those who have been before referred to,¹ viz.—

86–88. The daughter's son, son's daughter's son, and son's son's daughter's son of the maternal great grandfather.

89–91. The daughter's son, son's daughter's son, and son's son's daughter's son of the maternal great great grandfather.

92, 93. The daughter's son's son, and son's daughter's son's son of the maternal great grandfather.

94, 95. The daughter's son's son and son's daughter's son's son of the maternal great great grandfather.

96, 97. The daughter's daughter's son and son's daughter's daughter's son of the maternal great grandfather.

98, 99. The daughter's daughter's son and son's daughter's daughter's son of the maternal great great grandfather.

Then come the *matri bandhus* to whom the deceased was *pitri bandhu ex parte paternâ*, viz.—

Those to whom the deceased was *pitri bandhu ex parte paternâ*.

100–103. The mother's maternal grandfather, his son, grandson,² and great grandson.

104–107. The mother's maternal great grandfather, his son, grandson, and great grandson.

Here Dr. Jogendranath Bhattacharya³ places the great great grandson of the mother's maternal grandfather and great grandfather, but

¹ *Ante*, pp. 390, 391.

para. 1; *ante*, p. 383.

² "Mitakshara," chap. ii. s. vi.

³ "Hindu Law," 2nd ed., p. 461.

according to Pundit Rajkumar Sarvadhikari ¹ they will apparently come after the daughter's son of the mother's maternal great grandfather.²

Those to whom deceased was *atma bandhu* *ex parte maternâ*.

Then come the *matri bandhus* to whom the deceased was *atma bandhu ex parte maternâ*, viz.—

108–110. The daughter's son,³ the son's daughter's son, and the grandson's daughter's son of the mother's maternal grandfather.

111–113. The daughter's son, the son's daughter's son, and the grandson's daughter's son of the mother's maternal great grandfather.

Then apparently follow ⁴—

114, 115. The great great grandson of the mother's maternal grandfather and great grandfather.

Those to whom deceased was *pitri bandhu*.

Then follow the *matri bandhus* to whom the deceased was *pitri bandhu*, viz.—

116, 117. The daughter's grandson, and son's daughter's grandson of the mother's maternal grandfather.

118, 119. The daughter's grandson and son's daughter's grandson of the mother's maternal great grandfather.

Those to whom deceased was *matri bandhu*.

Then follow the *matri bandhus* to whom the deceased was *matri bandhu*, viz.—

120, 121. The daughter's daughter's son, and son's daughter's daughter's son of the mother's maternal grandfather.⁵

122, 123. The daughter's daughter's son, and son's daughter's daughter's son of the mother's maternal great grandfather.

Female Heirs in Bombay.

Sister in Bombay Presidency.

In the Bombay Presidency a sister is treated as a *gotraja sapinda*,⁶ and inherits after the paternal grandmother and

¹ "Hindu Law of Inheritance," p. 717.

² Below.

³ "Mitakshara," chap. ii. s. vi. para. 1.

⁴ Above.

⁵ As to these however, see Ghose's "Hindu Law," 2nd ed., p. 152, *ante*, p. 385.

⁶ In *Lallubhai Bapubhai v. Manku-*

varbai (1876), 2 Bom. 388, at p. 421, West, J., says: "It seems to me that he (Nilakantha in the 'Vyavahara Mayukha') introduces her rather on the ground of *sapindaship* than of *gotraship*, but calls to his aid a quibbling play upon the term '*gotra*' as a make-weight." See *Gandhi Mangalal v. Jadab (Bai)* (1899), 24 Bom. 192, at p. 213; 1 Bom. L. R. 574.

before the paternal grandfather, whether the case be governed by the "Mitakshara" ¹ or by the "Mayukha," ² except where there is an invariable and ancient custom to the contrary.³

She comes before a half-brother,⁴ and after a brother's son.⁵ In cases governed by the "Mitakshara," where the competition is between her and a half-brother's son,⁶ the latter is entitled to preference over her as heir,⁷ but it would be otherwise in cases governed purely by the "Vyavahara Mayukha." ⁸

She comes before a father's brother's son ⁹ or his son,¹⁰ a stepmother,¹¹ a brother's widow,¹² an uncle's widow,¹³ or a more remote male relative.¹⁴

The fact that another heir has intervened between the last male holder and the sister does not exclude the right of the sister.¹⁵

Half-sisters apparently succeed after half-brothers.¹⁶

Sisters of the
half blood.

They take before a stepmother, a paternal uncle,¹⁷ or a paternal uncle's widow.¹⁸

An unendowed sister has no prior right over an endowed sister, such as an unendowed daughter has over an endowed daughter.¹⁹

In the Bombay Presidency sisters take absolute estates in severalty, and not as joint tenants.²⁰

¹ *Bhagwan Vithoba v. Warubai* (1908), 32 Bom. 300; 10 Bom. L. R. 389.

² "Vyavahara Mayukha," chap. iv. s. viii. para. 19; *Venayeck Anundrow v. Luxumeebaee* (1864), 9 M. I. A. 520; 3 W. R. P. C. 41; S. C. in court below (1861), 1 Bom. H. C. 117; *Sakharam Sadashiv Adhikari v. Sitabai* (1879), 3 Bom. 353.

³ *Sakharam Sadashiv Adhikari v. Sitabai* (1879), 3 Bom. 353.

⁴ *Sakharam Sadashiv Adhikari v. Sitabai* (1879), 3 Bom. 353.

⁵ *Mulji Purshotum v. Cursandas Natha* (1900), 24 Bom. 563; 2 Bom. L. R. 721.

⁶ *Ante*, p. 375.

⁷ *Bhagwan Vithoba v. Warubai* (1908), 32 Bom. 300; 10 Bom. L. R. 389.

⁸ *Bhagwan Vithoba v. Warubai* (1908), 32 Bom. 300; 10 Bom. L. R. 389; *Sakharam Sadashiv Adhikari v. Sitabai* (1879), 3 Bom. 353.

⁹ *Venayeck Anundrow v. Luxumeebaee* (1864), 9 M. I. A. 520; 3 W. R.

P. C. 41; *Lakshmi v. Dada Nanaji* (1879), 4 Bom. 210.

¹⁰ *Balu v. Khandu* (1879), 4 Bom. 214.

¹¹ *Lakshmi v. Dada Nanaji* (1879), 4 Bom. 210.

¹² *Rudrapa v. Irava* (1903), 28 Bom. 82; 5 Bom. L. R. 676.

¹³ *Mahantapa v. Nulgangawa* (1879), 3 Bom. 368 note.

¹⁴ *Dhondur Gurav v. Gangabai* (1879), 3 Bom. 369.

¹⁵ *Ibid.*

¹⁶ West and Bühler (2nd ed., p. 186) place them immediately after whole sisters, see Maynu's "Hindu Law," 7th ed., p. 720; but this would, in cases governed by the "Mayukha," place them before half-brothers (above).

¹⁷ *Trikam Purshottam v. Natha Daji* (1911), 36 Bom. 120; 13 Bom. L. R. 863.

¹⁸ *Kesserbai v. Valab Raoji* (1879), 4 Bom. 188.

¹⁹ *Bhagirathbai v. Baya* (1881), 5 Bom. 264.

²⁰ *Rindabai v. Anacharya* (1890), 15 Bom. 206.

Other females
born in the
family.

The position of other females born in the family is by no means clear.

It is argued that the text of the "Mayukha,"¹ which supports the right of the sister on the ground that "Being begotten in her brother's family (*gotra*) she possesses the qualifications of a *gotraja*," can be applied by parity of reasoning to the daughters of all *gotraja sapindas*, but the right of a sister is expressed,² and with the exception of a daughter and sister no female born in the family is placed among the *gotraja sapindas*.³ There is some authority⁴ that they are heirs. In one case⁵ the father's half-sister was preferred to the mother's brother. There is no authority showing their exact position (if any) amongst the *bandhus*. In the absence of custom they should be placed, it is submitted, after all the *bandhus* who have been enumerated. As the Hindu law does not favour an escheat, something may be said for this arrangement. In one case referred to in West and Bühler's "Hindu Law,"⁶ the sastris preferred the brother's daughters to their sons. In another case a daughter's daughter was treated as an heir.⁷

Widows of
sapindas.

In the Bombay Presidency the widows of *gotraja sapindas*⁸ and of *samanodakas*⁹ are held to be heirs.

Subject to the preferential rights of the persons enumerated in what is called the compact series of heirs,¹⁰ they take in the place occupied by their husbands, but immediately after all the male *gotrajas* who belong to the line¹¹ to which their respective husbands belonged.¹²

¹ Chap. iv. s. viii. para. 19.

² See *Lallubhai Bapubhai v. Mankuvarbai* (1876), 2 Bom. 388, at p. 446.

³ See *Ganesh v. Waghu* (1903), 27 Bom. 610; 5 Bom. L. R. 581; *Venilal v. Parjaram* (1894), 20 Bom. 173.

⁴ See *Madhavram v. Dave Trambuklal* (1896), 21 Bom. 739, at p. 744 (as to niece and grandniece); *Lallubhai Bapubhai v. Mankuvarbai* (1876), 2 Bom. 388, at p. 446; *Tuljaram Morarji v. Mathuradas* (1881), 5 Bom. 662, at p. 672.

⁵ *Saguna v. Sadashiv Pandu* (1902), 26 Bom. 710; 4 Bom. L. R. 527.

⁶ 2nd ed., p. 207.

⁷ *Gangaram v. Ballia Vithoba*, Bom. P. J. 1876, p. 31.

⁸ *Lallubhai Bapubhai v. Mankuvarbai* (1876), 2 Bom. 388, at pp. 444, 445; S. C. affirmed on appeal, *Lulloobhoy Bappoooboy v. Cassibai* (1880), 7 I. A. 212; 5 Bom. 110; 7 C. L. R. 445. See cases below, note 12, *post*, p. 397, note 1.

⁹ *Lakshmi Bai v. Jayram Hari* (1869), 6 Bom. H. C. A. C. 152.

¹⁰ I.e. the list of heirs ending with the brother's sons. "Mitakshara," chap. ii. s. v. para. 2 (*ante*, p. 376); "Vyavahara Mayukha," chap. iv. s. viii. para. 18; *Mohandas v. Krishnabai* (1881), 5 Bom. 597, at p. 602; *Nahalchand Harakchand v. Hemchand* (1884), 9 Bom. 31, at p. 34.

¹¹ I.e. the widows of males in the paternal grandfather's line come after males in the same line, and similarly in the paternal great grandfather's line, and the paternal great great grandfather's line the males are preferred, see *Rachava v. Kalingapa* (1892), 16 Bom. 716, at pp. 719, 720; *Kashibai v. Moreshwar Raghunath* (1911), 35 Bom. 389; 13 Bom. L. R. 552; *Ambaidas v. Jijibhai* (1912), 14 Bom. L. R. 261 (a Mayukha case).

¹² *Lallubhai Bapubhai v. Mankuvarbai* (1876), 2 Bom. 388, as explained by *Rachava v. Kalingapa*

"We think that the preponderance of reason is in favour of holding that the females in each line of *gotrajas* are excluded by any males existing in that line, within the limits to which *gotraja* relationship extends."¹ Thus the sons of a paternal uncle inherit in preference to the widow of another paternal uncle of the deceased,² and the paternal uncle's son's son is preferred to a paternal uncle's widow.³ The brother's widow comes before a grandson of a paternal uncle.⁴

The right of these widows must be mainly rested on the ground of positive acceptance and usage."⁵ It does not extend to widows of *bandhus*.⁶

The rights of the following have been declared by the Courts, viz. the son's widow⁷ (whom Balambhatta places immediately after the paternal grandmother), the stepmother,⁸ brother's widow,⁹ brother's son's widow,¹⁰ the widow of a paternal first cousin,¹¹ and a paternal uncle's widow.¹²

As to the estate taken by such widows, see *post*, p. 448.

Female Heirs in Madras.

Although it has been held¹³ that in the Madras Presidency women do not take unless they are expressly named in the text-books, the Madras High Court has treated certain female relatives as *bandhus*, on the ground that "any relative who

Female heirs
in Madras.

(1892), 16 Bom. 716; *Nahalchand Harakchand v. Hemchand* (1884), 9 Bom. 31; *Russoobai v. Zoolekhabai* (1895), 19 Bom. 707; *Venkapa v. Holyawa* (1873), 9 Bom. 34, note; *Sita Ram v. Chintuman* (1902), 24 All. 472, at p. 474.

¹ *Rachava v. Kulingapa* (1892), 16 Bom. 716, at p. 719.

² *Ibid.*

³ *Kashibai v. Moreshvar Raghunath* (1911), 35 Bom. 389; 13 Bom. L. R. 552; *Ranchod Naran v. Ajoobai* (1907), 9 Bom. L. R. 1149.

⁴ *Khandacharya v. Govindacharya* (1911), 13 Bom. L. R. 1005.

⁵ *Lulloobhoy Bappoobhoy v. Cassibai* (1880), 7 I. A. 212, at p. 237; 5 Bom. 110, at p. 124; 7 C. L. R. 445, at p. 453, S. C. in Court below (1876), 2 Bom. 386.

⁶ *Vallabhdas Jamnadas v. Sakarbai* (1900), 25 Bom. 281; 2 Bom. L. R. 343.

⁷ *Roopchund Tilukchund v. Phoolchund Dhurmchund* (1824), 2 Borr. 616; *Jetha (Bai) v. Haribai*, Bom. P. J. 38 of 1872. She is excluded by a brother or brother's son, *Vithal Raghunath v. Haribayee* (1871), 9 Bom. 34 note; *Venkapa v. Holyawa* (1873),

Ibid.; but takes before a paternal first cousin, *Vithalvas Manickdas v. Jeshubai* (1879), 4 Bom. 219.

⁸ *Kesserbai v. Valab Raoji* (1879), 4 Bom. 188, at p. 208. She comes before the widow of a half-brother, *Rakhmabai v. Tukaram* (1886), 11 Bom. 47, and before a paternal uncle's son, *Russoobai v. Zoolekhabai* (1895), 19 Bom. 707.

⁹ *Khandacharya v. Govindacharya* (1911), 13 Bom. L. R. 1005. She is excluded by a daughter, *Sita Ram v. Chintuman* (1902), 24 All. 472, and by a brother's son, even if he be separated, *Nahalchand Harakchand v. Hemchand* (1884), 9 Bom. 31. As to the widow of an undivided brother, see *Manjappa Hegade v. Lakshmi* (1890), 15 Bom. 234.

¹⁰ *Madhavram Mugatram v. Dave Trambaklal Bhawanishankar* (1896), 21 Bom. 739.

¹¹ *Lulloobhoy Bappoobhoy v. Cassibai* (1880), 7 I. A. 212; 5 Bom. 110; 7 C. L. R. 445.

¹² *Kashibai v. Moreshvar Raghunath* (1911), 35 Bom. 389; 13 Bom. L. R. 552.

¹³ *Ante*, p. 350.

is also a cognate may be treated as coming within the definition of *bhinna gotra sapinda*, and that the term '*sapinda*' as used in chap. ii. s. vi. of the '*Mitakshara*' included females."¹ It places them, however, after all male *bandhus*.²

On the above principle the following have been held to be heirs, viz. sister,³ half sister,⁴ son's daughter,⁵ daughter's daughter,⁶ father's sister,⁷ brother's daughter.⁸

Earlier decisions negated the claims of these women to be heirs,⁹ and Mr. Mayne¹⁰ gives excellent reasons for doubting the soundness of the decisions of the Madras High Court. So far as the "*Mitakshara*," which is the paramount authority in the Madras Presidency, is concerned, the construction put upon it by the other High Courts¹¹ seems the right one, and there is not in Madras, as in Bombay,¹² an express text of a local authority or a custom to support the view.

The Madras system does not admit the wives of *gotraja sapindas* as heirs.¹³

Inheritance on Reunion.

Inheritance on
reunion.

Both under the *Mitakshara* and Bengal systems of law there are special rules for the inheritance in case of reunion after partition.¹⁴

According to the Bengal school "the reason for inheritance by a reunited coparcener is not spiritual benefit, but a quasi-contractual relation and affection for each other."¹⁵

¹ *Balamma v. Pullayya* (1894), 18 Mad. 168, at p. 170; *Kutti Ammal v. Radakristna Aiyar* (1875), 8 Mad. H. C. 88; *Venkatasubramaniam Chetti v. Thayarammah* (1898), 21 Mad. 263, at p. 267.

² *Venkata Narasimha Appa Rao Bahadur (Rajah) v. Venkata Purushothama Jagannadha Gopala Row Bahadur (Rajah Surenani)* (1908), 31 Mad. 321. See *Vellanki Venkata Krishna Row (Rajah) v. Venkata Rama Lakshmi Narsayya* (1876), 4 I. A. 1, at p. 8; 1 Mad. 174, at p. 185; 26 W. R. C. R. 21, at p. 22.

³ *Kutti Ammal v. Radakristna Aiyar* (1875), 8 Mad. H. C. 88. Her claim is inferior to that of her son, *Lakshmanammal v. Tiruvengada Mudali* (1882), 5 Mad. 241.

⁴ *Kumaravelu v. Virana Goundan* (1879), 5 Mad. 29.

⁵ *Nallanna v. Ponnal* (1890), 14 Mad. 149.

⁶ *Ramappa Udayan v. Arumugath Udayan* (1893), 17 Mad. 182. As to sister's daughter, see *Sundrammal v. Rangasami Mudaliar* (1894), 18 Mad. 195.

⁷ *Chinnammal v. Venkatachala* (1891), 15 Mad. 421. See *Narasimha v. Mangammal* (1889), 13 Mad. 10.

⁸ *Venkatasubramaniam Chetti v. Thayarammah* (1898), 21 Mad. 263.

⁹ See cases cited in Norton's Leading Cases, 531.

¹⁰ "Hindu Law," 7th ed., pp. 725-730.

¹¹ *Ante*, p. 350.

¹² *Ante*, pp. 394, 395.

¹³ *Balamma v. Pullaya* (1894), 18 Mad. 168.

¹⁴ See *ante*, pp. 343, 344.

¹⁵ *Akshay Chandra Bhattacharya v. Hari Das Goswami* (1908), 35 Calo. 721, at p. 726; 12 C. W. N. 511, at p. 514.

A reunited brother of the whole blood has precedence over a non-reunited brother of the whole blood, and a reunited brother of the half-blood has precedence over a non-reunited brother of the half-blood, *i.e.* relationship being equal, the succession is regulated by union. A reunited brother of the half-blood shares equally with a non-reunited brother of the whole blood. A whole brother reunited excludes a half-brother reunited, *i.e.* union being equal, superior relationship rules the succession.¹

Where there has been a reunion, properly so called,² and where the descendants of the persons reuniting continue to be members of the reunited family, the law of inheritance applicable is the same as in the case of the death of any of those between whom the reunion took place.³

The "Smṛiti Chandrika" lays down further rules for the succession in case of reunion.⁴ According to the "Viramitrodaya,"⁵ after the reunited brothers of the half blood, or brothers of the full blood, come the father or paternal uncle if reunited, then half-brothers not reunited, then the father not reunited, then the mother, and then the widow. Then comes the sister, and, failing her, the unassociated *sapindas*.

Hermits and Members of Religious Orders.

The Hindu law has made special rules as to the succession to the property of a hermit (*Vanaprastha*), an ascetic (*Sannyasi* or *Joti*),⁶ or a professed religious student (*Bramachari*) belonging to the three religious orders into which the twice-born classes may enter. The property of the first would go to a spiritual brother, associated in holiness, *i.e.* belonging to the

¹ "Mitakshara," chap. ii. s. ix. paras. 5-13; "Daya-Bhaga," chap. xi. s. v. paras. 13-39; "Vyavahara Mayukha," chap. iv. s. ix. paras. 5-13; "Vivada Chintamani" (F. C. Tagore's translation), p. 308; *Ramasami v. Venkatesam* (1892), 16 Mad. 440; *Tara Chand Ghose v. Pudum Lochun Ghose* (1866), 5 W. R. C. R. 249; *Sham Narain v. Court of Wards* (1873), 20 W. R. C. R. 197; *Gopal Chunder Daghoria v. Kenaram Daghoria* (1867), 7 W. R. C. R. 35; *Raj Kishore Lahoory v. Gobind Chunder Lahoory* (1875), 1 Calc. 27, at p. 35;

24 W. R. 234, at p. 236.

² *Ante*, pp. 343, 344.

³ *Abhai Churn Jana v. Mungal Jana* (1892), 19 Calc. 634.

⁴ Chap. xii. paras. 23-29; "Viramitrodaya" (G. C. Sircar's translation), p. 214.

⁵ (G. C. Sircar's translation), pp. 214-216.

⁶ A custom that the preceptor's preceptor succeeded was proved in *Collector of Dacca v. Jagat Chunder Goswami* (1901), 28 Calc. 608; 5 C. W. N. 873.

same hermitage, that of the second to a virtuous pupil (disciple),¹ and that of the third to his religious preceptor.² On failure of these, "any one associated in holiness takes the goods."³

This principle is based entirely upon fellowship and personal association, and a stranger, though of the same order, is excluded.⁴ As these persons could rarely possess private property of any substance, the rules are not of great importance. There must be a real and not a fictitious or incomplete renunciation of worldly affairs to render these rules applicable.⁵

In the case of *sannyasis* a pupil has no right of inheritance until the performance of the final ceremony which severs him from his family.⁶

These rules have no application to Sudras.⁷

As to the widow of a *garbhari gosavi*, see *Gitabai v. Shivbakas* (1903), 5 Bom. L. R. 318.

The property of an endowment would necessarily follow the rules of succession in force in the particular endowment.⁸

As to the succession to the private property of a mohunt, see *Ramdhan Puri (Gossain) v. Dalmir Puri (Gossain)* (1909), 14 C. W. N. 191.

Escheat.

Escheat.

On failure of all these heirs the King, as represented by the Secretary of State, takes by way of escheat.⁹

It may be a question whether in the case of Brahmins the King does not take the property by way of trust for other Brahmins.¹⁰ The ancient texts provided in the case of Brahmins for the succession of the spiritual preceptor, pupil, fellow student in the Vedas, and lastly the Brahmins

¹ See *Dukharam Bharti v. Luchmun Bharti* (1879), 4 Calc. 954; 4 C. L. R. 49; *Sheoproskash Doss (Mohunt) v. Joyram Doss (Mohunt)* (1866), 5 W. R. M. R. 57; *Ram Dass v. Gunga Dass* (1862), 3 Agra, 295. This does not apply to the chela of a mohunt, *Ramdhan Puri (Gossain) v. Dalmir Puri (Gossain)* (1909), 14 C. W. N. 191. A pupil, who had left his master, would have no rights, *Soogun Chund v. Gopal Gir* (1872), 4 N. W. P. 101.

² See *Chhaju Gir v. Diwan* (1906), 29 All. 109.

³ "Mitakshara," chap. ii. s. viii. paras. 1-6; "Daya-Bhaga," chap. xi. s. vi. paras. 35, 36. See *Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran* (1887), 10 Mad. 375, at p. 384.

⁴ *Khuggender Narain Choudhry v.*

Sharupgu Oghorenath (1878), 4 Calc. 543.

⁵ See *Mudhoobun Dass (Mohunt) v. Hurey Kishen Bhunj*, Ben. S. D. A. 1852, p. 1089; *Khoodeeram Chatterjee v. Rookhnce Boistobee* (1871), 15 W. R. C. R. 197.

⁶ *Ramdhan Puri (Gossain) v. Dalmir Puri (Gossain)* (1909), 14 C. W. N. 191.

⁷ *Dharmapuram Pandara Sannadhi v. Virapandiyam Pillai* (1898), 22 Mad. 302.

⁸ *Post*, pp. 536-538.

⁹ *Collector of Masulipatam v. Cavalry Vencata Narrainapah* (1860), 8 M. I. A. 500; 2 W. R. P. C. 59; "Mitakshara," chap. ii. s. vii. para. 6; "Daya-Bhaga," chap. xi. s. vi. para. 27.

¹⁰ *Ibid.*

of the same village, endowed with learning in the three Vedas and other qualities.¹ It is difficult, however, to see how the Government would be bound by a trust of so vague a character.

There is no right of escheat in favour of a zemindar.²

The burden is upon the Government to show the absence of heirs.³

When the Government takes, it takes like any other heir, *i.e.* subject to all legal charges,⁴ but not subject to unauthorized alienations.⁵

¹ *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 38; 13 W. R. F. B. 49, at p. 59; *Jugdanund Gossamee v. Kessub Nund Gossamee*, W. R. 1864, C. R. 146; "Vyavastha Darpana" (2nd ed.), 308; "Vyavastha Chandrika," pp. 198-200; "Mitakshara," chap. ii. s. vii. paras. 1-4; "Daya-Bhaga," chap. xi. s. vi. para. 26.

² *Sonet Kowar (Ranee) v. Himmul Bahadoor (Mirza)* (1876), 3 I. A. 92;

1 Calc. 391.

³ *Gridhari Lall Roy v. Bengal Government* (1868), 12 M. I. A. 448; 1 B. L. R. P. C. 44; 10 W. R. P. C. 31.

⁴ *Collector of Masulipatam v. Cavaly Vencata Narrainapah* (1860), 8 M. I. A. 500, at p. 528; 2 W. R. P. C. 59, at p. 61; *Cavaly Vencata Narrainapah v. Collector of Masulipatam* (1867), 11 M. I. A. 619; 10 W. R. P. C. 47.

⁵ *Post*, p. 492.

CHAPTER XII.

INHERITANCE TO MALES ACCORDING TO THE BENGAL SCHOOL.

Founded on
spiritual
benefit.

THE law of inheritance, according to the Bengal school, is founded upon the principle of spiritual benefit.¹

“The heir or heirs are selected who are most capable of exercising those religious rites which are considered to be beneficial to the deceased.”²

The theory of spiritual benefit is not, however, in every case the guiding principle.³ As in the case of the Mitakshara school⁴ succession has in most cases been fixed by the texts of ancient writers.

Succession of
females.

“In most cases propinquity, spiritual efficacy, and natural love and affection run in the same lines and no difficulty arises, but whenever they run in different lines Jimutavahana⁵ was compelled to ignore spiritual efficacy and had recourse to other principles or express texts.”⁶

“The succession of females, according to Hindu law, is quite exceptional, and is not founded upon the ordinary rule, viz. that of spiritual benefit. It is true that in the case of the widow, she confers some spiritual benefit, but if that were the sole test, she would have ranked much lower than she does now. Daughters confer no benefit, but they succeed because their sons do.”⁷

Meaning of
“sapinda.”

The principles of the Bengal system of inheritance, so far as they depend upon spiritual efficacy, are derived from the rules which have been laid down for the performance of the

¹ *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15; 13 W. R. F. B. 49.

² *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), I. A. Sup. vol. 47, at p. 64; 9 B. L. R. 377, at p. 394; 18 W. R. C. R. 359, at p. 364.

³ See Sircar's “Hindu Law,” 3rd ed., pp. 288, 289; *Toolsey Dass Seal v. Luckhymoney Dassee (Sm)* (1900), 4 C. W. N. 743.

⁴ *Ante*, p. 360.

⁵ The author of the “*Daya-Bhaga*,” the leading treatise of the Bengal school. See *ante*, p. 12.

⁶ *Akshay Chandra Bhattacharya v. Hari Das Goswami* (1908), 35 Calc. 721, at p. 726; 12 C. W. N. 511, at p. 514.

⁷ *Gunga Pershad Kur v. Shum-bhoonath Burmun* (1874), 22 W. R. C. R. 393, at pp. 394, 395.

Parvana Sradh ¹ (ceremony of veneration) in honour of ancestors. In the course of such ceremonies the performer of the *sradh* offers a *pinda* or funeral cake, or, as it is called, an undivided oblation to his father, his father's father, and his father's father's father,² and also to his mother's father, his mother's father's father, and his mother's father's father's father.³

He thus becomes the *sapinda* or sharer in the funeral cake,⁴ not only of each one of the persons to whom he offers a cake, but also, secondly, of each person who on his death would at a similar ceremony offer a cake to his *manes*, and also, thirdly, of each person who offers a cake to any of the persons to whom he is bound to offer a cake.⁵

"Since the father and certain other ancestors partake of three funeral oblations as participating in the offering at obsequies, and since the son and other descendants to the number of three present oblations to the deceased (or to be shared by his *manes*); and he, who while living presents an oblation to an ancestor, partakes, when deceased, of oblations presented to the same person; therefore, such being the case, the middlemost of seven, who, while living, offered food to the *manes* of ancestors, and when dead partook of offerings made to them, became the object to which the oblations of his descendants were addressed in their lifetime, and shares with them, when they are deceased, the food which must be offered by the daughter's son and other descendants beyond the third degree. Hence, those ancestors to whom he presented oblations, and those descendants who present oblations to him, partake of an undivided offering in the form of (*pinda*) food at obsequies. Persons who partake of such offerings are *sapindas*."⁶

Pindas are of three descriptions in the following order of superiority ⁷ :—

Classes of
pindas.

¹ For a complete description of the ceremonies performed, see Colbrooke's "Miscellaneous Essays," vol. ii. p. 166, and R. K. Sarvadhikari's "Hindu Law of Inheritance," pp. 57, 94-100. The *parvana sradh*, at which two sets of oblations are offered, is to be distinguished from the *ekoddishtha sradh* which is in honour of a single ancestor.

² "Manu," chap. iii. para. 216.

³ These last were not included in Manu, but were added by Yajñavalkya, the law-giver, who promulgated his code towards the middle of the first century, A.D.; Rajkumar Sarvadhikari's "Law of Inheritance,"

pp. 58, 59. See Balusami Pandithar v. Narayana Rau (1897), 20 Mad. 342.

⁴ See Wilson's "Glossary," p. 465.

⁵ *Anrita Kumari Debi v. Lakhi Narayan Chuckerbutty* (1868), 2 B. L. R. F. B. 28, at p. 32; *S. C. Omrit Koomaree Dubee v. Luckee Narain Chuckerbutty*, 10 W. R. F. B. 76, at p. 81.

⁶ "Daya-Bhaga," chap. xi. s. i. para. 38; *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at pp. 39, 40; 13 W. R. F. B. 49, at pp. 59, 60.

⁷ R. K. Sarvadhikari's "Law of Inheritance," pp. 817, 818.

1. Those presented directly to the deceased.
2. Those offered to his three paternal ancestors and participated in by him.

"That the *pindas* offered to paternal ancestors are primary, and those offered to maternal ancestors are secondary in importance, and that there is a difference between the efficacy of the two classes of *pindas* is not only laid down in distinct terms by Jagannath,¹ but is to be well deduced from Rughunundun's 'Sraddha Tattwa.'"²

3. Those which he was bound to offer to his three maternal ancestors.

"Although the deceased has no right of participation in the oblations presented to his maternal ancestors, still, inasmuch as the three immediate maternal ancestors received oblations from him, and the agnate and cognate descendants of each offered *pindas* which the deceased was bound to give, there is thus a heritable bond between him and his maternal kinsmen."³

In each of these three classes *pindas* presented by agnate descendants of a common ancestor are preferred to *pindas* presented by cognate descendants of such ancestor.⁴

After offering these *pindas* or cakes the performer wipes his hand with *kusa* grass, and offers the wipings or crumbs of the cakes (*lepa*)—which are spoken of as divided offerings—to the three next highest paternal ancestors. He thus, upon similar principles, becomes what is called a *sakulya*, not only of such ancestors, but also of such of his descendants as would offer the *lepa* to him, and of such persons who offer the *lepa* to an individual to whom he offers the *lepa*.

Sakulyas.

He is also the *sakulya* of persons who offer a *lepa* to an individual to whom he offers a *pinda*, and of persons who offer a *pindu* to an individual to whom he offers the *lepa*.

Samanodakas.

He then offers libations of water to the *manes* of seven additional generations of paternal ancestors. The persons connected with him by virtue of these libations of water are called his *samanodakas*.⁵

¹ See Colebrooke's "Digest," vol. ii. p. 572.

² *Huri Das Bundopadhya v. Bama Churn Chattopadhya* (1888), 15 Calc. 780, at p. 791.

³ R. K. Sarvadhikari's "Law of

Inheritance," pp. 818, 819.

⁴ *Ibid.*; above note 2.

⁵ Rajkumar Sarvadhikari's "Hindu Law of Inheritance," p. 57; "Mitakshara," chap. ii. s. v. para. 6.

He would also be a *samanodaka* of persons who offer libations to an individual to whom he offers a *pinda* or the *lepa*, and of persons who offer a *pinda* or the *lepa* to an individual to whom he offers libations.

"The doctrine of funeral cakes is the key to the whole Hindu law of inheritance."¹

A man is also the *sapinda* of his mother,² his father's mother,³ Mother, grandmother, great grandmother, and his father's father's mother.⁴

Sapindas are either agnate or *gotraja*⁵ *sapindas*, i.e. connected entirely through males, or cognate or *bhinna-gotra*⁶ *sapindas*. Division of *sapindas*. *sapindas* otherwise *bandhus*, i.e. connected through females.

Under the Bengal school *sapinda* relation extends to the third degree. Under the Mitakshara school (*ante*, p. 363), it extends to the sixth degree, *sakulyas* not being recognized, as such, by the latter school.

According to the "Daya-Bhaga" *bandhus* are either— *Bandhus. Ex parte paternā.*

(1) Connected with the deceased through the father, father's father, or father's father's father of the mother of the *bandhu*.

These are all daughters' sons in the branch to which they belong. They rank after the male issue in their branch, and, according to Rajkumar Sarvadhikari, "before the males of the branch above them."⁷ Three are mentioned in the "Daya-Bhaga,"⁸ viz. the sons of the daughter of the father,⁹ of the grandfather,¹⁰ of the great grandfather.¹¹

Or (2) connected with the deceased through the father, *Ex parte maternā.* father's father, or father's father's father of the mother of the deceased.

The first kind are *sapindas* because they offer cakes to their maternal ancestors who are the paternal ancestors of the deceased.

The second kind are *sapindas* because they offer cakes to their paternal ancestors, who are the maternal ancestors of the deceased.

"Therefore a kinsman whether sprung from the family (of the deceased), though of different male descent, as his own daughter's son, or his father's daughter's son, or sprung from a different family, as his maternal uncle or the like, being allied by a common funeral cake (*pinda*) on account of

¹ *Amrita Kumari Debi v. Lakhi Narayan Chuckerbutty* (1868), 2 B. L. R. F. B. 28, at p. 39; *S. C. Omrit Koomaree Dabre v. Luckee Narain Chuckerbutty*, 10 W. R. F. B. 76, at p. 84; *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 34; 13 W. R. F. B. 49, at p. 57.

² See *post*, pp. 411, 412.

³ See *post*, p. 414.

⁴ *Ibid.*

⁵ Belonging to the same *gotra* or family.

⁶ Belonging to a different *gotra* or family.

⁷ *Post*, pp. 414, 415, 416.

⁸ Chap. xi. s. vi. paras. 8, 9.

⁹ *Post*, p. 413.

¹⁰ *Post*, p. 414.

¹¹ *Ibid.*

their presenting offerings to three ancestors in the paternal and the maternal family of the deceased owner, is a *sapinda*.”¹

Order of
succession.

The relative efficacy of the different kinds of offerings gives rise to the following rules for determining the order of succession :—

Sapindas
before others.

I. All *sapindas*, whether agnate or cognate, succeed before any *sakulya*, and all *sakulyas* are preferred to any *samanodaka*.²

Thus a brother's daughter's son comes before the great great grandson of the owner's great grandfather.³

“The *sapindas* are allowed to come in before the *sakulyas*, because undivided oblations are considered to be of higher spiritual value than divided ones ; and the *sakulyas* are in their turn preferred to the *samanodakas*, because divided oblations are considered to be more valuable than libations of water.”⁴

The following rules are laid down primarily with regard to *sapindas*, but, bearing in mind Rule I., they are equally applicable to *sakulyas* and *samanodakas*.⁵

Descendants
of deceased.

II. Those who offer the *pinda* to the deceased are preferred to those who offer it to any of his ancestors.

There is an exception in the case of the son's daughter's son, and the son's son's daughter's son.⁶

Descendants
of paternal
ancestors

III. Those who offer funeral cakes to the paternal ancestors of the deceased are preferred to those who offer to his maternal ancestors only, irrespective of the number of cakes offered.⁷

Thus the father's brother's daughter's son is preferred to the mother's brother's son.⁸

¹ “Daya-Bhaga,” chap. xi. s. vi. para. 19; *Uma Sunker Moutro v. Kals Komul Mozumdar* (1880), 6 Cal. 256, at pp. 263, 264; 7 C. L. R. 145, at p. 153.

² *Digumber Roy Chowdhry v. Moti Lal Bundopadhyia* (1883), 9 Cal. 563; 12 C. L. R. 204; *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 38; 13 W. R. F. B. R. 49, at p. 59; *Deyanath Roy v. Muthoor Nath Ghose* (1835), 6 Ben. Sel. R. 27 (new edition, 30).

³ *Digumber Roy Chowdhry v. Moti Lal Bundopadhyia* (1883), 9 Cal. 563; 12 C. L. R. 204.

⁴ *Guru Gobind Shaha Mandal v.*

Anand Lal Ghose Mazumdar (1870), 5 B. L. R. 15, at p. 38; 13 W. R. F. B. 49, at p. 59.

⁵ *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 39; 13 W. R. F. B. R. 49, at p. 59.

⁶ *Pqst*, pp. 411, 415.

⁷ *Gobind Proshad Talookdar v. Moresh Chunder Surma Ghattuck* (1874), 15 B. L. R. 35; 23 W. R. C. R. 117; *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 39; 13 W. R. F. B. R. 49, at p. 59.

⁸ *Braja Lal Sen v. Jiban Krishna Roy* (1898), 26 Cal. 285.

"The *sapindas* in the paternal line offer oblations to the paternal ancestors which the deceased was bound to offer, and in which he participates, and the *sapindas* in the maternal line offer oblations to the maternal ancestors, which the deceased was bound to offer, but in which he does not participate; so that, while they both confer spiritual benefit on the deceased, the former benefit him doubly by enabling him to participate in the oblations offered by them and by discharging a duty that was incumbent on him of offering oblations to certain ancestors, and the latter benefit him only in one way, namely, by offering certain oblations which he was bound to offer; and therefore, while both are entitled to inherit his estate, the latter succeed only on failure of the former." ¹

IV. A *sapinda* who offers oblations to the father of the deceased is to be preferred to a *sapinda* who offers oblations to the grandfather or great grandfather, although the latter offers more cakes of the same description, and similarly a *sapinda* who offers to the paternal grandfather is preferred to one who offers to the paternal great grandfather. ²

Descendants
of father
before those
of grand-
father, etc.

V. Agnate *sapindas* in any line are always preferred to the cognate *sapindas* of the same line. ³

Agnates before
cognates in
same line.

VI. Between an agnate *sapinda* and a cognate *sapinda* of equal degree of propinquity, the former is preferred to the latter, although the latter is the giver of a larger number of cakes in which the deceased would participate than the former. ⁴

Agnates before
cognates of
equal degree.

VII. Subject to the above rules, those who offer the larger number of cakes of a particular description are invariably preferred to those who offer a less number of cakes of the same description which the deceased receives or in which he participates. ⁵

Number of
cakes offered.

Thus a brother comes before a brother's son.

This is generally equivalent to saying that the nearer *sapinda* excludes the more remote. ⁶

As an example of this rule, those who offer oblations to both ^{Half blood.}

¹ *Braja Lal Sen v. Jiban Krishna Roy* (1898), 26 Calc. 285, at p. 291; *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 39; 13 W. R. F. B. 49, at p. 59.

² "Daya-Bhaga," chap. xi. s. vi. paras. 5, 6; *Pran Nath Surma Jowardar v. Surrut Chunder Bhuttacharjee* (1882), 8 Calc. 460; 10 C. L. R. 484.

³ *Huri Das Bundopadhyia v. Bama Churn Chattopadhyia* (1888), 15 Calc. 780, at pp. 790, 791.

⁴ *Huri Das Bundopadhyia v. Bama Churn Chattopadhyia* (1888), 15 Calc. 780, at p. 790.

⁵ *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 39; 13 W. R. F. B. R. 49, at p. 59.

⁶ *Ante*, p. 402.

paternal and maternal ancestors, are superior to those who offer only to the paternal ancestors.¹

A brother of the full blood is therefore preferred to a brother of the half blood.²

Offering to
nearer
ancestors.

VIII. Where the number of such cakes is equal, those that are offered to nearer ancestors are preferred to those offered to more distant ones.³

According to these rules cognates are not, as in the "*Mitakshara*,"⁴ postponed to all agnates, but are preferred to such agnates as are capable of less religious efficacy.

Order of suc-
cession among
sapindas.

Following the above rules we find the order of succession among *sapindas*, according to the Bengal school, to be as follows :—

Descendants of the Deceased⁵ and his Widow.

Sons.

1. Son.⁶

Illegitimate
sons.

It is clear that the illegitimate sons of the twice-born have no rights of inheritance,⁷ and, according to the decisions of the High Court of Bengal, an illegitimate son of a Śūdra cannot inherit according to the Bengal school.

This view has been arrived at by limiting the expression "*dasiputra*" in the "*Daya-Bhaga*"⁸ to the son of a female slave,⁹ and by holding that the abolition of slavery precludes the existence of a "*dasiputra*" at the present day. His father can give him a share of the property.¹⁰

Grandson.

2. Son's son.¹¹

¹ *Sheo Soondary v. Pirthee Singh* (1877), 4 I. A. 147, at p. 152; *Rajkishore Lahoory v. Gobind Chunder Lahoory* (1875), 1 Calc. 27; 24 W. R. C. R. 234; 4 I. A. 153; Colebrooke's "Digest," vol. iii. p. 480.

² *Post*, p. 412; "*Daya-Bhaga*," chap. xi. s. v. para. 12.

³ *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 39; 13 W. R. F. B. 49, at p. 59; *Gobind Proshad Talookdar v. Mohesh Chunder Surma Ghuttuck* (1874), 15 B. L. R. 35, at p. 47; 23 W. R. C. R. 117, at p. 120.

⁴ *Ante*, p. 382.

⁵ See *ante*, p. 406.

⁶ "*Daya-Bhaga*," chap. iii. s. i. para. 18; chap. xi. s. i. para. 32.

⁷ "*Daya-Bhaga*," chap. ix. para. 25. See *ante*, pp. 366–369.

⁸ Chap. ix. paras. 29, 30.

⁹ *Ram Saran Garain v. Tekchand Garain* (1900), 28 Calc. 194; *Kirpal Narain Tewari v. Sukurmoni* (1891), 19 Calc. 91; *Narain Dhara v. Rakhal Gain* (1875), 1 Calc. 1; 23 W. R. C. R. 334. If this question be reconsidered it may well be held that the texts contemplate the son, not only of a slave, but of any kept woman, see Jolly's "*Hindu Law of Partition, etc.*," pp. 187, 188; Sircar's "*Hindu Law*," 2nd ed., pp. 189, 190; Ghose's "*Hindu Law*," 2nd ed., pp. 655–659.

¹⁰ "*Daya-Bhaga*," chap. ix. para. 29.

¹¹ "*Daya-Bhaga*," chap. iii. s. i. para. 18; chap. xi. s. i. para. 34.

As in the case of the Mitakshara (*ante*, p. 369), son's sons take the share of their deceased father by representation.

3. Son's son's son.¹

Great
grandson.

As in the case of the Mitakshara (*ante*, p. 370), son's son's sons take the share of their deceased father by representation.

4. Widow.²

Widow.

The widow succeeds whether the property be divided or undivided.³

Where there are several widows, they take jointly with rights of survivorship and of partition as in the case of those governed by the "Mitakshara."⁴

For a custom excluding sonless widows, see *Russir Lal Bhunj v. Purush Munnee*, Beng. S. D. A. 1847, p. 205.

The estate of the widow is devested by the birth⁵ or adoption⁶ of a son.

As to the interest taken by a widow, see *post*, chap. xv.

5. Daughter.⁷

Daughter.

"Daughters confer no benefit, but they succeed because their sons do."⁸

"The unmarried daughter is first entitled to inherit: if there be no maiden daughter, then the daughter who has, and the daughter who is likely to have, male issue⁹ are together entitled to the succession. Daughters who are barren, or

Priority
amongst
daughters.

¹ "Daya-Bhaga," chap. iii. s. i. para. 18; chap. xi. s. i. para. 34; *Gooroo Gobindo Chowdhry v. Hurreemadhub Roy* (1863), Marsh. 398; 2 Hay 401.

² "Daya-Bhaga," chap. xi. s. i. paras. 6, 43; *Cossinaut Bysack v. Hurroosondry Dassce* (1819), Morley's "Digest," vol. ii. p. 198; Norton's L. C. 85; S. C. on appeal (1826), Sircar's "Vyavastha Darpana," 2nd ed., p. 97; Clarke, 91; Montrou's cases, p. 495; *Mohun Lall Khan v. Siroomunnee (Ranee)* (1812), 2 Ben. Sel. R. 32 (new edition, 40); *Durga Nath Pramanik v. Chintamani Dass* (1903), 31 Calc. 214; 8 C. W. N. 11; *Deepo Debia v. Gobindo Deb* (1871), 16 W. R. C. R. 42; *Chunder Kant Surmah v. Bungshee Deb Surmah* (1866), 6 W. R. C. R. 61.

³ *Srinath Serma v. Radhakant* (1796), 1 Ben. Sel. R. 15 (2nd ed., 19); *Bhyroochund Rai v. Russomunee* (1799), 1 Ben. Sel. R. 27 (2nd

ed., 36); *Radha Churn Rai v. Kishenchund Rai* (1801), 1 Ben. Sel. R. 33 (2nd ed., 44); and other cases cited in 1 Morley, 316.

⁴ *Ante*, p. 371.

⁵ *Bamundoss Mookerjee v. Tarinee (Mussamut)*, (1858), 7 M. I. A. 169, at p. 183; *ante*, p. 26.

⁶ *Ante*, p. 187.

⁷ "Daya-Bhaga," chap. xi. s. ii. para. 1.

⁸ *Gungu Pershad Kur v. Shum bhoonath Burmun* (1874), 22 W. R. C. R. 393.

⁹ It does not seem to be necessary that the son should be capable of presenting oblations, as the text of the "Daya-Bhaga" (chap. xi. s. ii. para. 3), upon which the right of the married daughters is based, does not contain expressions, which in the case of succession to *stridhan* gave foundation to the arguments used in *Charu Chunder Pal v. Nobo Sunderi Dasi* (1891), 18 Calc. 327.

widows without male issue, or mothers of daughters only can under no circumstance inherit." ¹

Sastri G. C. Sircar ² considers that a daughter having a power of adoption must now be considered as capable of having a son and therefore as an heir, but it is submitted that there is no authority for this proposition.

A childless widow does not acquire by remarriage any right to inherit to her father. ³

It has been suggested ⁴ that a widowed daughter, who is not past the age of childbearing, can inherit, as the law now permits her to remarry, ⁵ but it is submitted that modern legislation, although it may supersede the authority of ancient texts, cannot be used for construing them.

On the death of a daughter who has taken, the estate passes (in preference to her sons) to her sisters who have taken or are competent to take. ⁶

Daughters, who inherit, take a joint estate with rights of survivorship and partition. ⁷

Where two daughters have succeeded jointly to their father's estate, and at the death of one of them the survivor is a childless widow, the latter will nevertheless take by survivorship the whole estate. ⁸

As to the nature of the estate taken by a daughter, see *post*, chap. xv.

6. Daughter's son. ⁹

A daughter's son is not entitled to succeed as heir to his maternal grandfather's estate, so long as any daughter not disqualified, or in whom a right of inheritance has once vested, survives. ¹⁰

A daughter's son's son is not an heir according to the Bengal school.

Daughter's
son.

Daughter's
son's son.

¹ *Binode Koomaree Dabee v. Pur-dhan Gopal Sukhee* (1865), 2 W. R. C. R. 176, at p. 177; *Turamonee Gooptea v. Luckheemonee Dossee* (1862), Marsh. 29; 1 Ind. Jur. O. S. 22; Hay, 67; *Radha Kishen Manjhee v. Ram Mundul (Rajah)* (1866), 6 W. R. C. R. 147; *Rajchunder Das v. Dhunmune (Mussumau)* (1824), 3 Ben. Sel. R. 362 (new edition, 482); "Daya-Bhaga," chap. xi. s. ii. para. 3. As to an unmarried prostitute daughter, see *ante*, p. 372.

² "Law of Adoption," pp. 397, 398.

³ Act XV. of 1856, s. 4.

⁴ *Bimola (Sreemutty) v. Dangoo Kansaree* (1873), 19 W. R. C. R. 189.

⁵ *Ante*, p. 33.

⁶ *Tinumoní Dasi v. Nibarun Chunder Gupta* (1882), 9 Cal. 154; 12 C. L. R. 376, overruling *Radha*

Kishen Manjhee v. Ram Mundul (Rajah) (1866), 6 W. R. C. R. 147, see *ante*, p. 372.

⁷ *Aumritolall Bose v. Rajoneekant Mitter* (1875), 2 I. A. 113, at pp. 126, 127; 15 B. L. R. 10, at p. 24; 23 W. R. C. R. 214, at p. 218; *Boidya Nath Seit v. Durga Charan Basak* (1865); S. C. Sircar's "Vyavastha Darpana," 2nd ed., pp. 170, 171.

⁸ *Aumritolall Bose v. Rajoneekant Mitter* (1875), 2 I. A. 113; 15 B. L. R. 10; 23 W. R. C. R. 214.

⁹ "Daya-Bhaga," chap. xi. s. ii. paras. 2, 17-29.

¹⁰ *Aumritolall Bose v. Rajoneekant Mitter* (1875), 2 I. A. 113; 15 B. L. R. 10; 23 W. R. C. R. 214. See *Sib Chunder Mullick v. Teepoorah Soondary Dossee* (1842), Fulton, 98.

Pundit Rajkumar Sarvadhikari¹ at this point introduces the son's daughter's son,² and the son's son's daughter's son,³ on the ground that they also present *pindas* directly to the deceased,⁴ and this is said by Mr. J. C. Ghose⁵ to be the law as laid down by the *Rishis* (sages of antiquity). Opinions of judges⁶ have, however, placed these persons in the succession following the paternal great grandfather's daughter's son.⁷ Sastri G. C. Sircar⁸ would apparently place them after the mother's sister's son.⁹ If the principle that an offering to the deceased himself is to be preferred to an offering in which he participates¹⁰ be carried out to its entirety, these descendants would be entitled to the position assigned to them by Baboo Rajkumar Sarvadhikari. The fact that they are not mentioned in the "Daya-Bhaga" is not by itself conclusive,¹¹ but in this case goes a long way to show that they were not intended to come in at this point.

The descendants of the deceased being exhausted, the inheritance passes to the father of the deceased, and after him in order of proximity (after the mother) to such of the agnate descendants of the father as are *sapindas* of the deceased, and then also in order of proximity to such of the cognate descendants of the father as are *sapindas* of the deceased.

7. The father.¹²

Father.

8. The mother.¹³

Mother.

The "Daya-Bhaga"¹⁴ gives the mother this right in the following words: "Her claim properly precedes that of the brothers and the rest; since it is necessary to make a grateful return to her, for benefits which she has conferred by bearing the child in her womb and nurturing him during his infancy; and also because she confers benefits on him by the

¹ "Hindu Law of Inheritance," p. 821. See also J. N. Bhattacharya's "Hindu Law," 2nd ed., 503.

² See *post*, p. 415.

³ *Ibid.*

⁴ See *ante*, p. 406.

⁵ "Hindu Law," 2nd ed., pp. 103, 105.

⁶ *Huri Das Bundopadhyaya v. Bama Churn Chattopadhyaya* (1888), 15 Cal. 780, at pp. 793, 794; *Prannath Surma Jowardar v. Surrut Chundra Bhuttacharjee* (1882), 8 Cal. 460, at pp. 463, 464; 10 C. L. R. 484, at p. 487, citing Colebrooke's "Digest," iii. 530. See *Brāja Lal Sen v. Jiban Krishna Roy* (1898), 26 Cal. 285, at p. 291.

⁷ *Post*, p. 415. See *Gobind Proshad Talookdar v. Mohesh Chunder Surma*

Ghuttuck (1874), 15 B. L. R. 35; 23 W. R. C. R. 117.

⁸ "Hindu Law," 3rd ed., p. 286.

⁹ *Post*, p. 416.

¹⁰ *Ante*, p. 404.

¹¹ Cf. *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15, at p. 42; 13 W. R. F. B. 49, at p. 61; *Prannath Surma Jowardar v. Surrut Chundra Bhuttacharjee* (1882), 8 Cal. 460, at p. 463; 10 C. L. R. 484, at p. 486.

¹² "Daya-Bhaga," chap. xi. s. iii.; *Hemlutta Debea v. Goluck Chundra Gosayn* (1842), 7 Ben. Sel. R. 108 (new edition, 127).

¹³ "Manu," chap. ix. paras. 131-140

¹⁴ Chap. xi. s. iv. para. 2. See also "Daya-Krama Sangraha," chap. i. s. vi. para. 2.

birth of other sons who may offer funeral oblations in which he will participate. A mother tastes with her husband the funeral repast consisting of oblations to the manes; and the paternal grandmother with her husband; and the paternal great grandmother with hers."¹

Stepmother.

A stepmother has no rights of inheritance, as she confers no spiritual benefit on her stepson.²

Father's Agnate Descendants.

Brothers.

9. Brothers.³

An undivided brother is preferred to a divided brother.⁴

Half brothers.

Brothers of the whole blood are preferred to brothers of the half blood,⁵ whether the property be divided or undivided.⁶

The former make offerings both to the paternal and maternal ancestors of the deceased, and the latter offer to his paternal ancestors only.⁷

When a half brother is joint with the deceased, and the whole brother has separated, they take together.⁸

Sister.

A sister is not an heir according to the Bengal school.⁹ The fact that a sister might produce an heir does not make her an heir,¹⁰ but if her son be conceived at the time of the succession opening out he will succeed.¹¹

¹ "Daya-Bhaga," chap. xi. s. vi. para. 3; Colebrooke's "Digest," vol. iii. pp. 519, 598, 625. See "Manu," chap. ix. para. 45.

² "Daya-Bhaga," chap. xi. s. vi. para. 3; *Bhyrobee Dossee v. Nabkissen Bhose* (1836), 6 Ben. Sel. R. 53 (new edition, 61); *Lakhi Priya v. Bhairab Chandra Chaudhuri* (1833), 5 Ben. Sel. R. 315 (new edition, 369); *Alhadmoni Dassea v. Gokoolmoni Dassea*, Ben. S. D. A. of 1852, p. 563.

³ "Daya-Bhaga," chap. xi. s. v. paras. 1-3.

⁴ *Kesabram Mahapatrar v. Nandkishor Mahapatrar* (1869), 3 B. L. R. A. C. 7; 11 W. R. C. R. 308; *Jaudubchunder Ghose v. Benodbeharry Ghose* (1864), 1 Hyde, 214.

⁵ "Daya-Bhaga," chap. xi. s. v. paras. 9-12; *Neelkisto Deb Burmono v. Beer Chunder Thakoor* (1869), 12 M. L. A. 523; at pp. 539, 541; 3 B. L. R. P. C. 13, at pp. 17, 18; 12 W. R. P. C. 21, at pp. 23, 24.

⁶ *Sheo Soondary v. Pirthee Singh* (1877), 4 I. A. 147; approving of *Rajkishore Lahoory v. Gobind Chunder Lahoory* (1875), 1 Calc. 27; 24 W. R. C. R. 234; *Jshen Chunder*

Chowdhry v. Bhyrub Chunder Chowdhry (1866), 5 W. R. C. R. 21.

⁷ *Sheo Soondary v. Pirthee Singh* (1877), 4 I. A. 147, at p. 152; ante, pp. 407, 408.

⁸ *Sheo Soondary v. Pirthee Singh* (1877), 4 I. A. 147, at p. 153; *Rajkishore Lahoory v. Gobind Chunder Lahoory* (1875), 1 Calc. 27; 24 W. R. C. R. 234; 4 I. A. 153; Ghose's "Hindu Law," 2nd ed., p. 139.

⁹ *Kirpa Mayee Dibeeah (Raj Koonwaree) v. Damoodur Chunder Deyb* (1845), 7 Ben. Sel. R. 192 (2nd ed., 236); *Kalee Pershad Sarma v. Bhoirabee Dabee* (1865), 2 W. R. C. R. 180; *Ramdayal Deb v. Magnee (Musst)* (1864), 1 W. R. C. R. 227; *Rukkini Dasi (Srimati) v. Kadarnath Ghose* (1870), 5 B. L. R. App. 87; *Anund Chunder Mookerjee v. Teetogram Chatterjee* (1866), 5 W. R. C. R. 215; Colebrooke's "Digest," vol. iii. p. 517.

¹⁰ *Kesub Chunder Ghose v. Bishno Persaud Ghose*, Ben. S. D. A. 1860, ii. 340; 2 Sev. A. C. 240; contra *Karuna Mai v. Jai Chandra Ghose* (1830), 5 Ben. Sel. R. 46 (new edition, 50).

¹¹ Ante, pp. 346, 347.

10. Brother's son.

Brother's son

A brother's son who was joint with the deceased is preferred to one that was separate.¹

Sons of brothers of the whole blood succeed before brothers of the half blood.²

A united brother's son of the whole blood succeeds before a divided brother's son of the whole blood, and a united brother's son of the half blood succeeds before a divided brother's son of the half blood, but if the son of the whole brother be separated, and the son of the half brother be united, then they both inherit together.³

The son of a reunited brother succeeds to the exclusion of all the sons of unassociated brothers.⁴

11. Brother's son's son.⁵

Brother's grandson

The same principle as to the preference of those who are united,⁶ and of those who are of full blood,⁷ as in the case of brothers and brothers' sons, would apparently apply.

A brother's son's daughter is not an heir.⁸

A brother's son's son's son is a *sukulya*, and therefore comes after a brother's son's daughter's son.⁹

Father's Cognate Descendants.

12. Sister's son.¹⁰

Sister's son.

¹ *Akshay Chandra Bhattacharya v. Hari Das Goswami* (1908), 35 Calc. 721, at p. 724; 12 C. W. N. 511, at p. 513; *Jaudub Chunder Ghose v. Benodbeharry Ghose* (1864), 1 Hyd. 214.

² *Kylash Chunder Sircar v. Gooroo Churn Sircar* (1865), 3 W. R. C. R. 43; S. C. affirmed on review, *Gooroo Churn Sircar v. Koylash Chunder Sircar* (1866), 6 W. R. C. R. 93; "Daya-Bhaga," chap. xi. s. vi. para. 2.

³ "Daya-Krama Sangraha," chap. i. s. viii. paras. 3-5.

⁴ W. Macnaghten's "Hindu Law," vol. ii. p. 72; Colebrooke's "Digest," vol. iii. p. 524.

⁵ "Daya-Bhaga," chap. xi. s. vi. para. 6.

⁶ *Ant.*, p. 412.

⁷ *Ibid.*

⁸ *Radha Pearce Dossee v. Doorga Monee Dosia* (1866), 5 W. R. C. R. 131.

⁹ *Digumber Roy Chowdhry v. Moti*

Lal Bundopadhyay (1883), 9 Calc. 563; 12 C. L. R. 204, differing from *Kashee Mohun Roy v. Raj Gobind Chuckerbutty* (1875), 24 W. R. C. R. 229.

¹⁰ *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15; 13 W. R. F. B. 49; *Gurush Chunder Roy v. Nilkomul Roy* (1874), 22 W. R. C. R. 264; *Seeta Ram Gossain v. Lukeer Chand Chuckerbutty* (1871), 15 W. R. C. R. 433; *Raj Chunder Narain Chowdhry v. Goculchund Goh* (1801), 1 Ben. Sel. R. 43 (new edition, 56); *Lakhi Priya v. Bhairab Chandra Chaudhuri* (1833), 5 Ben. Sel. R. 315 (new edition, 369); *Sumbochunder Roy v. Gunga Churn Sein* (1838), 6 Ben. Sel. R. 234 (new edition, 291); *Karuna Mai v. Jai Chandra Ghose* (1830), 5 Ben. Sel. R. 46 (new edition, 50); "Daya-Bhaga," chap. xi. s. vi. para. 8.

A full sister's son is not preferred to a half sister's son.¹

Pundit Rajkumar Sarvadhikari² and Dr. J. N. Bhattacharya³ place the brother's daughter's son,⁴ and the brother's son's daughter's son⁵ after the sister's son.

Sister's
daughter

Noither a sister's daughter nor her son is an heir.⁶

Paternal
grandfather
and his
descendants.
Grandfather.
Grandmother.

Then follow the father's father and (after the father's mother) his descendants in a similar order.

13. Father's father.

14. Father's mother.

Grandfather's Agnate Descendants.

Paternal
uncle.
Paternal
uncle's son.
Paternal
uncle's son's
son.

15. Father's father's son.

16. Father's father's son's son.⁷

17. Father's father's son's son's son.⁸

Grandfather's Cognate Descendants.

Paternal
aunt's son.

18. Father's sister's son.⁹

Pundit Rajkumar Sarvadhikari¹⁰ places at this point the father's father's son's daughter's son,¹¹ and the father's father's son's son's daughter's son.¹²

Then follow the father's father's father, and his descendants in a similar order.

Paternal great
grandfather.
Paternal great
grandmother.

19. Father's father's father.

20. Father's father's mother.

¹ *Bholu Nuth Roy v. Rakhal Das Mukherji* (1884), 11 Calc. 69.

² "Hindu Law of Inheritance," p. 822.

³ "Hindu Law," 2nd ed., pp. 504, 507, see, however, *post*, p. 415, note 14.

⁴ *Post*, p. 415. See *ante*, p. 408, rule viii.

⁵ *Ibid.*

⁶ *Kalee Pershad Surma v. Bhoirabee Dabee* (1865), 2 W. R. C. R. 180. See *Krishna Pada Dutt v. Secretary of State* (1908), 35 Calc. 631; 12 C. W. N. 453.

⁷ See *Huridas Bandopadhyaya v. Bama Churn Chattopadhyaya* (1888), 15 Calc. 780, at p. 791.

⁸ *Ibid.*; *Gobind Proshad Talookdar v. Mohesh Chunder Surma Ghuttuck* (1874), 15 B. L. R. 35; 23 W. R. C. R. 117; *In the matter of Oodoy Churn Mitter* (1878), 4 Calc. 411; *Juggut Narain Singh v. Collector of Manbhoom* (1877), 4 Calc. 413, note; *Gopal Chunder Nath Coondoo v. Haridas Chini* (1885), 11 Calc. 343.

⁹ "Daya-Bhaga," chap. xi. s. vi. para. 9; W. Macnaghten's "Hindu Law," ii. 93, places him before the father's brother's son's son.

¹⁰ "Hindu Law of Inheritance," p. 882. See *ante*, p. 408 (rule viii.).

¹¹ *Post*, p. 416.

¹² *Ibid.*

Great Grandfather's Agnate Descendants.

21. Father's father's father's son.

22. His son.¹23. His son's son.²Paternal
granduncle.Paternal
granduncle's
son.Paternal
granduncle's
grandson.*Great Grandfather's Cognate Descendants.*24. Paternal great grandfather's daughter's son.³Paternal
grandaunt's
son.

Pundit Rajkumar Sarvadhikari⁴ places at this point the great grandfather's son's daughter's son⁵ and the great grandfather's grandson's daughter's son.⁶

Following these⁷ come some heirs who would, according to Pundit R. K. Sarvadhikari, be placed earlier.⁸ Sastri G. C. Sircar⁹ would place them after some of the maternal relations who take after them, and says that they are only to be placed here provisionally.¹⁰ They are described by Mr. J. C. Ghose¹¹ as daughter's sons and are as follows:—

25. Son's daughter's son.¹²26. Son's son's daughter's son.¹²27. Brother's daughter's son.¹³28. Brother's son's daughter's son.¹⁴Son's
daughter's
son.
Grandson's
daughter's
son.
Brother's
daughter's
son.
Nephew's
daughter's
son.

¹ *Gopal Chunder Nath Coondoo v. Haridas Chini* (1885), 11 Calc. 343.

² *Mahoda v. Kuleani* (1803), 1 Ben. Sel. R. 67 (new edition, 82).

³ G. C. Sircar's "Hindu Law," 3rd ed., p. 286; *Gosaien Chund Kotraj v. Kishenmunnee* (*Mussummaut*) (1836), 6 Ben. Sel. R. 77 (now edition, 90); "Daya-Bhaga," chap. xi. s. vi. para. 9.

⁴ "Hindu Law of Inheritance," p. 823. See *ante*, pp. 408 (rule viii.), 413, 414.

⁵ Below.

⁶ *Ibid.*

⁷ G. C. Sircar's "Hindu Law," 3rd ed., pp. 307, 308.

⁸ *Ante*, p. 411.

⁹ "Hindu Law," 3rd ed., p. 286. See pp. 307, 308.

¹⁰ This apparently means that on further consideration a different place will be assigned to them. According

to Pundit Rajkumar Sarvadhikari ("Hindu Law of Inheritance," pp. 821, 822) they will be placed respectively in the lines of the deceased, his father, his grandfather, and his great grandfather, following the persons in such lines who are heirs.

¹¹ "Hindu Law," 2nd ed., p. 139.

¹² Colebrooke's "Digest," vol. iii. p. 530.

¹³ *Ibid.*; *Digumber Roy Chowdhry v. Moti Lal Bundopadhyaya* (1883), 9 Calc. 563; 12 C. L. R. 204; *Gobind Proshad Talookdar v. Mohesh Chunder Surma Ghuttuck* (1874), 15 B. L. R. 35; 23 W. R. C. R. 17; *Huri Das Bundopadhyaya v. Bama Churn Chuttopadhyaya* (1888), 15 Calc. 780. See *ante*, p. 414.

¹⁴ *Prannath Surma Jowardar v. Surrut Chunder Bhuttacharjee* (1882), 8 Calc. 460; 10 C. L. R. 484; Colebrooke's "Digest," vol. iii. p. 530.

Paternal
uncle's
daughter's
son.
Paternal
uncle's son's
daughter's
son.
Paternal
granduncle's
daughter's
son.
Granduncle's
son's
daughter's
son.
*Sapindus ex
parte materni.*
Maternal
grandfather.
Maternal
uncle.
His son.
His grandson.

' 29. Paternal uncle's daughter's son.¹

30. Paternal uncle's son's daughter's son.

31. Paternal granduncle's daughter's son.

32. Paternal granduncle's son's daughter's son.

Then follow the *sapinda* relations of the deceased through his maternal grandfather.²

They are—

33. The maternal grandfather.³

The Agnate Descendants of the Maternal Grandfather.

34. Mother's brother.⁴

35. Mother's brother's son.⁵

36. Mother's brother's son's son.⁶

The Cognate Descendants of the Maternal Grandfather.

Mother's
sister's son.

37. Mother's sister's son.⁷

Pundit Rajkumar Sarvadhikari would put in at this point the maternal grandfather's son's daughter's son, and the maternal grandfather's grandson's daughter's son, but, as in the cases above,⁸ they and the persons similarly situated in the lines of the maternal great grandfather and of the maternal great great grandfather would be postponed until after the maternal great great grandfather's daughter's son.⁹

Maternal
great grand-
father's line.

Then follow the *sapinda* relations of the deceased through his maternal great grandfather.

38. The maternal great grandfather.

¹ *Guru Gobind Shuha Mandal v. Anand Lal Ghose Mazumdar* (1870), 5 B. L. R. 15; 13 W. R. F. B. 49; *Braja Lal Sen v. Jiban Krishna Roy* (1898), 26 Calc. 285; *Gopal Chunder Nath Coondoo v. Haridas Chini* (1885), 11 Calc. 343. See *Gobindo Huneekar v. Woomesh Chunder Roy* (1864), W. R. F. B. R. 176.

² "Daya-Bhaga," chap. xi. s. vi. para. 20; "Daya-Krama Sangraha," chap. i. s. x. paras. 14-21.

³ "Daya-Krama Sangraha," chap. i. s. x. para. 14.

⁴ "Daya-Krama Sangraha," chap. i. s. x. para. 15; *Pudma Coomari Devi v. Court of Wards* (1891), 8 I. A. 229; 8 Calc. 302.

⁵ *Roopchurn Mohapatra v. Anund*

Lal Khan (1812), 2 Ben. Sel. R. 35 (new edition), 45; *Srimuty Dibeah (Rany) v. Koond Luta (Rany)* (1847), 4 M. I. A. 292; 7 W. R. P. C. 44; *Kassee Issoree Dibbeah (Musst) v. Goluck Chunder Gungolce*, Ben. S. D. A. 1848, p. 28; *Braja Lal Sen v. Jiban Krishna Roy* (1898), 26 Calc. 285.

⁶ "Daya-Krama Sangraha," chap. i. s. x. para. 16.

⁷ *Deyanath Roy v. Muthoor Nath Ghose* (1835), 6 Ben. Sel. R. 27 (new edition, 30).

⁸ *Ante*, pp. 414, 415.

⁹ *Post*, pp. 417, 418. According to Sastri G. C. Sircar's views ("Hindu Law," 3rd ed., p. 286), they should not have preference of all *sakulyas*.

*The Agnate Descendants of the Maternal Great
Grandfather.*

39. His son.¹
40. His son's son.²
41. His son's son's son.³

*The Cognate Descendants of the Maternal Great
Grandfather.*

42. His daughter's son.

Pundit Rajkumar Sārvadhikari⁴ places here the maternal great grandfather's son's daughter's son, and grandson's daughter's son.⁵

Then follow the *sapinda* relations of the deceased through his maternal great great grandfather.

43. The maternal great great grandfather.

Maternal
great great
grandfather's
line.

*The Agnate Descendants of the Maternal Great Great
Grandfather.*

44. His son.⁶
45. His son's son.⁶
46. His son's son's son.⁶

*The Cognate Descendants of the Maternal Great Great
Grandfather.*

47. The maternal great great grandfather's daughter's son.⁷

Pundit Rajkumar Sarvadhikari⁸ places here the maternal great great grandfather's son's daughter's son, and grandson's daughter's son.⁹

Then apparently come the persons who, although *sapindas*, are not included in the foregoing enumeration, viz.—

48. The maternal grandfather's son's daughter's son.

Other
sapindas
ex parte
maternā.

¹ "Daya-Krama Sangraha," chap. i. s. x. para. 17.

² See *Pudma Coomari Debi v. Court of Wards* (1881), 8 I. A. 89; 8 Calc. 302.

³ "Daya-Krama Sangraha," chap. i. s. x. para. 17; *Brāja Kishor Mitter Mazumdar v. Radha Gobind Dutt* (1869), 3 B. L. R. A. C. 435; 12 W. R. C. R. 339.

⁴ "Law of Inheritance," p. 823

⁵ See *ante*, pp. 414, 415, 416, and below.

⁶ "Daya-Krama Sangraha," chap. i s. x. para. 19.

⁷ *Ibid.*, para. 20.

⁸ "Law of Inheritance," p. 823

⁹ *Ante*, pp. 414, 415, 416, and *post*, p. 418.

49. The maternal grandfather's grandson's daughter's son.

50. The maternal great grandfather's son's daughter's son.

51. The maternal great grandfather's grandson's daughter's son.

52. The maternal great great grandfather's son's daughter's son.

53. The maternal great great grandfather's grandson's daughter's son.

Succession of
sakulyas,

Failing all *sapindas*, whether *gotraja*, or *bhinna gotra*, the *sakulyas*¹ succeed.

and
samanodakas.

Failing all *sakulyas*, the *samanodakas* succeed.²

In determining rival claims of *sakulyas* or of *samanodakas* the rules for determining the succession of *sapindas*³ are to be applied.⁴

As to inheritance to the property of hermits and members of religious orders, see *ante*, pp. 399, 400. As to escheat, see *ante* p. 400.

¹ *Ante*, p. 404.

² *Ante*, pp. 404, 405.

³ *Ante*, pp. 406-408.

⁴ *Guru Gobind Shaha Mandal v.*

Anand Lal Ghose Mazumdar (1870),

5 B. L. R. 15, at p. 39; 13 W. R.

F. B. R. 49, at p. 59. "

CHAPTER XIII.

STRIDHAN PROPERTY.

PROPERTY held by women is called "*Stridhana*."¹ This expression is, under the "Daya-Bhaga,"² confined to property which "she has power to give, sell or use, independently of her husband's control." This is sometimes described as "technical *stridhan*." In the "Mitakshara"³ the expression is not used in any technical sense. It includes all kinds of property held by a woman.

Meaning of "*Stridhana*."
"Daya-Bhaga."

"Mitakshara."

Except that the rules for inheritance of *sulka* differ from those in the case of other kinds of *stridhana*, the Mitakshara does not distinguish between different kinds of *stridhana*.

No distinction is made in the "Mitakshara" between property inherited by a woman from a male and from a female.⁴ According to the "Mitakshara," whatever is lawfully acquired in any manner by a woman married or not, is her *stridhana*.⁵

The author of the "Mayukha," "like the author of the 'Mitakshara,' 'Mayukha.'" declines to look upon the enumeration of specific kinds of *stridhan* in the old Smṛiti texts as exhaustive. He includes under the name all that under the law becomes the property of the woman, only, unlike the author of the 'Mitakshara,' he distinguishes the specific kinds enumerated in the texts from those which are not so enumerated, for purposes of inheritance."⁶

¹ "Stri," woman; "Dhana," property.

² Chap. i. s. i. para. 18.

³ Chap. ii. s. xi. paras. 3, 4. See *Sheo Shankar Lal v. Debi Sahai* (1903), 30 I. A. 202, at p. 205; 25 All. 468, at p. 472; 7 C. W. N. 831, at p. 837; 5 Bom. L. R. 828; *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at p. 272; *Gandhi Maganlal v. Jadab (Bai)* (1899), 24 Bom. 192, at p. 217; *Virasangappa Shetti v. Rudrappa Shetti* (1895), 19 Mad. 110, at p. 118. The Southern Indian authorities seem to limit the expression "*stridhana*" to the cases where the wife has com-

plete control over property, see "*Daya-Vibhaga*" (Burnell's translation), pp. 40-42; "Smṛiti Shandrika," chap. ix. s. i.

⁴ *Gandhi Maganlal v. Jadab (Bai)* (1899), 24 Bom. 192, at p. 217; 1 Bom. L. R. 574.

⁵ Chap. ii. s. xi.; *Salemma v. Lutchmana Reddi* (1897), 21 Mad. 100, at p. 103; *post*, p. 424.

⁶ *Manilal Rewadat v. Rewa (Bai)* (1892), 17 Bom. 758, at p. 769; *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at p. 260; *post*, pp. 436, 437.

Stridhan according to ancient writers.

Ancient writers described *stridhan* property with regard to the then usual modes of acquisition of property by a bride or wife, as such ; but such descriptions are not exhaustive.¹

Sources of property which with the change of ideas and habits became possible to a woman, such as property acquired by her by her own exertions, or by investment and speculation, would now be treated as *stridhana*.²

Proof.

There is no special rule as to the burden of proof in a case where there is a question whether certain property is *stridhan* property or not. The ordinary rules of burden of proof in the case of claims to property will apply,³ and if a woman is out of possession and claims property as her *stridhan* she may have to prove her right.

Classification of *stridhan*.

Stridhan property is classed according to the time when the woman acquired it.

If given at the time of the nuptials, it is styled "*Yautaka*." ⁴

If acquired by her at any other time, it is styled "*Ayautaka*." ⁵

Descriptions of *stridhan*.

Property acquired by a woman in the following ways were described as *stridhan* in the *shastras* and Codes ⁶ :—

I. Gifts at the time of marriage (*yautaka*). These include—

(a) (*Adhyagnika stridhana*) Gifts before the nuptial fire,⁷ i.e. at the actual marriage ceremony.

(b) (*Adhyavahanika stridhana*). Gifts received at the time of the marriage procession ⁸ or at any time of the marriage

Gifts at marriage.

¹ See "*Mitakshara*," chap. ii. s. xi. para. 4.

² *Post*, p. 424.

³ See *Ran Bijai Bahadur Singh (Dewan) v. Indarpal Singh* (1899), 26 I. A. 226; 26 Cal. 871; 4 C. W. N. 1; 2 Bom. L. R. 1; *Narayana v. Krishna* (1884), 8 Mad. 214; *Chowdram v. Tariny Kanth Lahiry* (1882), 8 Cal. 545; 11 C. L. R. 41; Mayne's "*Hindu Law*," 7th ed., p. 590.

⁴ From "*Yuta*" (joined together), "*Daya-Bhaga*," chap. i. s. ii. paras. 13, 14; "*Vyavahara Mayukha*," chap. iv. s. x. para. 17; "*Smriti Chandrika*," chap. ix. s. iii. para. 13.

⁵ "*Daya-Krama Sangraha*," chap. ii. s. iv. para. 1.

⁶ Sircar's "*Hindu Law*," 3rd ed.,

pp. 364-366; Banerjee's "*Law of Marriage*," 2nd ed., pp. 267 *et seq.*

⁷ "*Manu*," chap. ix. para. 194; "*Narada Smriti*" (Jolly's translation), p. 95; "*Vishnu*" ("*Viramotrodaya*," G. C. Sircar's translation, p. 220); "*Mitakshara*," chap. ii. s. xi. para. 2; *Churamun Sahu v. Gopi Sahu* (1909), 13 C. W. N. 994, at p. 996.

⁸ "*Manu*," chap. ix. para. 194; "*Narada Smriti*" (Jolly's translation), p. 95. According to some authorities this class of gifts includes gifts at the time of the first visit to the husband's house for the purpose of staying there (*diragamana*), G. C. Sircar's "*Hindu Law*," 3rd ed., p. 364.

ceremonial (which lasts for several days) before or after the effective ceremony.¹

The question whether a particular ceremony is a part of the marriage ceremony may be a question of the custom of a caste or district.²

Except under the "Daya-Bhaga"³ these include gifts given at the time by strangers.⁴

II. *Sulka*, or marriage fee.

This is the gratuity for the receipt of which a girl is given in marriage.⁵ It was originally paid to the father as the price of the bride, but when that was forbidden the father received it for the bride, and it became her property,⁶ as her dowry.

According to the "Viramitrodaya,"⁷ *sulka* is what is received by the bride or a married woman as a price of household furniture, conveyance, milch cattle, and ornaments. That work goes on to say:⁸ "It has been explained in the 'Madanaratna,' that the price of household furniture, etc., which is taken from the bridegroom or the like for giving (in marriage) the bride, in the shape of the bride's ornaments, is the fee or *sulka*. In the 'Mitakshara,' however, it is said that the fee or *sulka* is that which, having been taken, the bride is given in marriage. But in both (the books) it is intended that the father or the like takes on the understanding that it is to belong to the bride; because otherwise, in the absence of her right thereto the application of the denomination of woman's property to it would be unreasonable."

A different meaning of *sulka* is given in the following paragraphs of the "Daya-Bhaga"⁹ :—

Para. 20. "What is given to a woman by artists constructing a house or executing other work, as a bribe to send her husband or other person of her family to labour on such particular work is her fee. It is the fruit of labour since its purpose is to engage a labourer."¹⁰ Para. 21,

¹ See *Bistoo Pershad Burrall v. Radha Soonder Nath* (1871), 16 W. R. C. R. 115. In the "Dayatattwa" (G. C. Sircar's translation, p. 54) we find, "The time of marriage means time previous and posterior to the actual time of marriage. This is described in the treatise on marriage to begin from the *sraddha* for prosperity and to end with the ceremony of prostrating before the husband."

² *Bistoo Pershad Burrall v. Radha Soonder Nath* (1871), 16 W. R. C. R. 304.

³ Chap. iv. s. i. para. 6.

⁴ See W. Macnaghten's "Hindu Law," chap. ii. pp. 121, 122; Colebrooke's "Digest," chap. iii. pp. 559, 560.

⁵ "Mitakshara," chap. ii. s. xi. para. 6.

⁶ See Ghose's "Hindu Law," 2nd ed., p. 314.

⁷ G. C. Sircar's translation, pp. 222, 223.

⁸ *Ibid.*, p. 223.

⁹ Chap. iv. s. iii. paras. 20, 21.

¹⁰ See Colebrooke's "Digest," iii. p. 568. This paragraph arises from Jimutavahana having adopted a reading of the text of Katyayana defining a fee or *sulka* in which there is the word "*karminam*" (workmen) instead of "*karmanam*" (acts), "Viramitrodaya" (G. C. Sircar's translation), p. 223.

"Or a fee is that which is described by Vyasa,¹ 'what is given to bring the bride to her husband's house is denominated her fee.' That is what is given by way of bribe or the like to induce her to go to the house of her husband."

Bridegroom's
price.

Sastri G. C. Sircar² says: "The bridegroom's price also, which, according to recent practice originating in the moral and religious degradation of the so-called educated man, is extorted by the bridegroom's party from the bride's father, must on similar and stronger grounds of equity be considered to be the bride's *stridhana*, and the recipient must be held to be trustee for her." It is submitted that there are no grounds in law for this proposition, and it does not appear that in practice this money is treated as belonging to the bride.

Compensation
for second
marriage.

III. *Adhivedanika*, or the compensation given by a husband to his wife, on his taking a second wife.³

Gifts after
marriage.

IV. Gifts made to a wife after marriage by her relations or by her husband's relations (*anwadeyika*).⁴

This obviously does not include family jewels lent to her for use.⁵

Property in
lieu of main-
tenance.

V. Property given for the purpose, or in lieu, of maintenance,⁶ but not property allotted on partition to a wife or widow.⁷

Arrears of maintenance due to a Hindu widow at the time of her death,⁸

¹ Colebrooke's "Digest," iii. p. 570. Whether this be called *sulka* or not it belongs to the woman, see Strange's "Hindu Law," vol. i. p. 29.

² "Hindu Law," 3rd ed., p. 365.

³ "Vishnu" ("Viramitrodaya," G. C. Sircar's translation, p. 220); "Mitakshara," chap. ii. s. xi. para. 2. See *ante*, p. 32.

⁴ *Basanta Kumari Debi v. Kamikshya Kumari Debi* (1905), 32 I. A. 181; 33 Calc. 25; 10 C. W. N. 1; 7 Bom. L. R. 904 (bequest by a brother); *Ram Gopal Bhattacharjee v. Narain Chunder Bandopadhyaya* (1905), 33 Calc. 315; 10 C. W. N. 510 (a grant of a lease reserving annual rent); it includes gifts from parents or husband, *Sitabai v. Wasantrao* (1901), 3 Bom. L. R. 201. "Manu," chap. ix. para. 194, and "Narada Smriti" (Jolly's translation), p. 95, refer to gifts of a mother, brother, and father. "Manu," chap. ix. s. 195, refers to gifts by the husband's family. "Vishnu" ("Viramitro-

daya," G. C. Sircar's translation, p. 220) speaks of "what is given by the father and mother, the son or the brother," and also of what is given by the "*bandhus*." "Mitakshara," chap. ii. x. xi. paras. 5-7. Additional presents given by a father after marriage come under this head, although he gave others at the marriage, *Gopal Chandra Pal v. Ram Chandra Pramanik* (1901), 28 Calc. 311.

⁵ "Vyavahara Mayukha," chap. iv. s. x. para. 6; "Smriti Chandrika," chap. ix. s. i. para. 11.

⁶ *Doorga Koonwar (Mussamut) v. Tejoo Koonwar (Mussamut)* (1866), 5 W. R. M. A. 53; *Nellaikumaru Chetti v. Marakathammal* (1876), 1 Mad. 166; *Subramanian Chetti v. Arunachelam Chetti* (1904), 28 Mad. 1.

⁷ *Ante*, p. 320.

⁸ *Court of Wards v. Mohessur Roy (Rajah)* (1871), 16 W. R. C. R. 76; "Daya-Bhaga," chap. iv. s. i. para. 15.

and property purchased with money given to her for maintenance,¹ are her *stridhana*.

VI. Property belonging to a woman before marriage, ^{Property when maiden.} whether obtained by gift ² or otherwise.

VII. Gifts or bequests by the husband (*pritudatta*),³ whether ^{Gifts by husband.} of movable or immovable property.⁴

As to gifts or bequests of immovable property by a husband to his wife, see *post*, pp. 426-428.

Ornaments bought by the husband for investment,⁵ or for use only on special occasions,⁶ would not be the *stridhan* property of the wife.

The following modes of acquiring property were also referred to :—

Presents by strangers given after the time of the marriage ^{Gifts by strangers.} and during coverture.

The “Viramitrodaya,”⁷ “Daya-Bhaga,”⁸ and “Smriti Chandrika,”⁹ while classing these as *stridhan*, assert the husband’s dominion over them. They are really treated as presents to the husband.¹⁰

“It may . . . be deduced from the texts that, as a rule, it is only gifts obtained by a woman from her relations, and her ornaments and apparel that constitute her *stridhana*; and that the only gifts from strangers which come under that denomination are presents before the nuptial fire, and (according to some) presents made at the bridal procession. But neither gifts obtained from strangers at any other time, nor her acquisition by labour and skill, would constitute her *stridhana*.”¹¹

Property acquired by a sunnud from Government, in which a widow Sunnud from gets a full proprietary and transferable right, is descendible to her heirs,¹² Government. and it has been held that a service inam which had been enfranchised in ^{Enfranchised} a married woman’s favour was her *stridhana* property and descendible inam. to her heirs.¹³

¹ *Subramanian Chetti v. Arunachalam Chetti* (1904), 28 Mad. 1.

² See *Judoonath Sircar v. Bussunt Coomar Roy Chowdhry* (1873),¹¹ 11 B. L. R. 286; 19 W. R. C. R. 264; “Manu,” chap. ix. para. 200.

³ Lit. gifts in token of love. This expression includes gifts by relations.

⁴ See “Manu,” chap. ix. s. 195; “Narada Smriti” (Jolly’s translation), p. 95; *Venkata Rama Rao v. Venkata Suriya Rao* (1880), 2 Mad. 333; 8 C. L. R. 309; S. C. in court below (1877), 1 Mad. 281; *Rudha (Musst) v. Bisheshur Dass* (1874), 6 N. W. P. 279.

⁵ See G. C. Sircar’s “Hindu Law,” 3rd ed., p. 365.

⁶ *Radha (Musst) v. Bisheshur Dass* (1874), 6 N. W. P. 279.

⁷ G. C. Sircar’s translation, p. 221.

⁸ Chap. iv. s. i. para. 20; *Ram-dulol Sircar v. Joymoney Dabey (Sreemutty)* (1816), 2 Morley’s “Digest,” 65.

⁹ Chap. ix. s. i. para. 16.

¹⁰ See G. C. Sircar’s “Hindu Law,” 3rd ed., p. 365.

¹¹ Banerjee’s “Hindu Law of Marriage,” 2nd ed., p. 275.

¹² *Brij Indar Bahadur Singh v. Janki Koer (Ranee)* (1877), 5 L. A. 1; 1 C. L. R. 318.

¹³ *Salemma v. Lutchmana Reddi* (1897), 21 Mad. 100; see *post*, p. 450.

Acquisitions made by a woman before or after marriage by mechanical arts,¹ labour or skill.

"Wealth earned by a woman by the mechanical arts during coverture does not, except in the Benares and Maharashtra school, become her *stridhana*." ²

"Mitakshara."

The "Mitakshara" ³ adds, "which she may have acquired by inheritance, partition,⁴ seizure, or finding." It also, after enumerating the different kinds of *stridhan*,⁵ adds, "any other (separate acquisition)." ⁶

"Viramitrodaya."

The "Viramitrodaya" defines *stridhana* as property whereof a woman is the owner.⁷

This clearly does not include, except in Bombay,⁸ property acquired by a woman by inheritance,⁹ and Sir G. D. Banerjee ¹⁰ argues that the expression in "Yajnavalkya" was not intended to bear the full meaning attributed to it by the "Mitakshara."

Although women may not have an absolute interest in property acquired by inheritance,¹¹ or partition,¹² the income of such property is at their disposal.¹³

There is nothing to prevent women owning property, even though it may not have been acquired in any of the modes enumerated by the ancient writers.

"We are not prepared to hold that the rules of Hindu law are so inelastic as to be capable of application only to such descriptions of interests in property as formed the subject-matter of transactions at the time when the rules were first formulated." ¹⁴

Investments.

Property purchased by a woman from funds, or from the proceeds of property to which she is absolutely entitled, or in

¹ Such as painting and spinning. Macnaghten's "Hindu Law," vol. ii. p. 241.

² Banerjee's "Law of Marriage," 2nd ed., p. 309.

³ Chap. ii. s. xi. para. 2. See also "Vyavahara Mayukha," chap. iv. s. x. para. 26; *Vijjarangam v. Lakshman* (1871), 8 Bom. H. C. O. C. 244, at p. 260.

⁴ See *ante*, p. 320.

⁵ Chap. ii. s. xi. para. 1.

⁶ See also "Vyavahara Mayukha," chap. iv. s. x. para. 2.

⁷ G. C. Sircar's translation, p. 221. See also "Vyavahara Mayukha," as interpreted in Banerjee's "Hindu Law of Marriage," 2nd ed., p. 281.

⁸ *Post*, p. 451.

⁹ *Bhugwandeem Doobey v. Myna Bae* (1867), 11 M. I. A. 487; 9 W. R. P. C. 23; *Thakoor Deyhee (Mussumat) v. Baluk Ram (Rai)* (1866), 11 M. I. A. 139; 10 W. R. P. C. 4; 2 Ind. Jur. N. S. 106; *post*, pp. 448-450.

¹⁰ "Hindu Law of Marriage," 2nd ed., p. 278.

¹¹ *Post*, pp. 448, 449.

¹² *Ante*, p. 320.

¹³ *Post*, p. 455.

¹⁴ *Ram Gopal Bhattacharjee v. Nairn Chandra Bandopadhyaya* (1905), 33 Calc. 315, at p. 319; 10 C. W. N. 510, at p. 511.

exchange for property to which she is so entitled, belongs to her absolutely, and she can dispose of it by will or otherwise, whether it be movable or immovable.¹

As to accumulations of income of inherited property, see *post*, pp. 458, 459.

As to a married woman's power to contract, see *ante*, pp. 70, 71.

Property acquired by adverse possession ² is under the absolute control of a woman, and passes to her *stridhan* heirs.³

A woman's interest in her *stridhan* property is measured by her power to deal with it.

"During maidenhood, excepting the disqualification by reason of nonage, a Hindu female labours under no other incapacity as regards her power over her *stridhana*, and, except in the capacity of guardian, her father and her other relations have no control over it."⁴ On her marriage she would retain the control over such property.

All property given ⁵ or bequeathed ⁶ to a woman by her husband, her relations, or his relations, before or after marriage, is termed her "*saudayika*" (*lit.* gifts of affectionate kindred),

¹ *Luchmun Chunder Gier Goswami v. Kalli Churn Singh* (1873), 19 W. R. (C. R. 292; *Venkata Rama Rao v. Venkata Suriya Rau* (1877), 1 Mad. 281; S. C. on appeal (1880), 2 Mad. 333; 8 C. L. R. 304; *Madavarayya v. Tirtha Sani* (1877), 1 Mad 307; *Nellaikumar Chetti v. Marakathammal* (1876), 1 Mad. 166; *Subramanian Chetti v. Arunachalam Chetti* (1904), 28 Mad. 1.

² See *post*, p. 489.

³ *Mohim Chunder Sanyal v. Kashi Kant Sanyal* (1897), 2 C. W. N. 161

⁴ Banerjee's "Law of Marriage," 2nd ed., pp. 314, 438.

⁵ *Gosasen Chund Kobraj v. Kishenmunnee (Mussammatt)* (1836), 6 Ben. Sei. R. 77 (2nd ed., 90) (gift by a brother, and by a father's brother's son); *Doorga Koonwar (Mussammatt) v. Tejoo Koonwar (Mussammatt)* (1866), 5 W. R. M. R. 53 (gift by a son); *Madavarayya v. Tirtha Sani* (1877), 1 Mad. 307 (gift by father); *Jeevun Punda v. Sona (Mussammatt)* (1869), 1 N. W. P. 66 (gift by husband);

Kashee Chunder Roy Chowdhry v. Gour Kishore Gooko (1868), 10 W. R. (C. R. 139 (ditto); *Venkata Rama Rao v. Venkata Suriya Rao* (1880), 2 Mad. 333; 8 C. L. R. 304 (ditto); *Radha (Mussammatt) v. Bisheshur Dass* (1874), 6 N. W. P. 279 (ditto); *Basanta Kumari Debi v. Kamikshya Kumari Debi* (1905), 32 I. A 181; 33 Cal. 23; 10 C. W. N. 1; 7 Bom. L. R. 904 (gift by brother); *Munna v. Puran* (1883), 5 All. 310 (acquired from brother); *Hurymohun Shaha v. Shonaton Shaha* (1876), 1 Cal. 275 (gift by husband's father's sister's son); *Bhau v. Raghunath Krishna Gurar* (1905), 30 Bom. 229; 7 Bom. L. R. 936.

⁶ *Damodar Madhraj v. Purmanandas Jeewandas* (1883), 7 Bom. 155 (legacy from husband); *Judonath Sircar v. Bussunt Coomar Roy Chowdhry* (1873), 11 B. L. R. 286, at p. 295; 19 W. R. C. R. 264 (legacy from father); *Ramlulol Sircar v. Joymoney Dabey (Sreemutty)* (1816), Morley's "Digest," ii. 65.

and, except it be land given to her by her husband and not expressly declared by him to be given absolutely, is absolutely at her disposal.¹

Property into which such property has been converted is also absolutely at her disposal.²

The testamentary power of a Hindu female is commensurate with her power of disposition in her lifetime.³

Gift of immovable property by husband to wife.

Except in cases to which the Hindu Wills Act applies,⁴ a gift or devise by the husband of immovable property⁵ to his wife without express words creating an absolute interest, conveys only the interest of a widow.⁶

This restriction has no application to movable property given by the

¹ See *post*, p. 428.

² *Venkata Rama Rao v. Venkata Suriya Rao* (1880), 2 Mad. 333; *S. C. Rowvenkata Mahapati v. Mohipati Suriah*, 8 C. L. R. 304.

³ *Ibid.*

⁴ *Caralapathi Chunna Cunniah v. Cota Nammalvariah* (1909), 33 Mad. 91. *Post*, pp. 427, 428.

⁵ With this is classed every kind of property producing a periodical income; *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at p. 265. Cf. *Sakharam Hari v. Luxmi-priya Tartha Swami* (1910), 34 Bom. 349; 12 Bom. L. R. 157; *Madhavrao Moreswar v. Kashibai* (1909), 34 Bom. 287; 12 Bom. L. R. 9.

⁶ *Saroda Sundari Dassi v. Kristo Jiban Pal* (1900), 5 C. W. N. 300; *Bhoba Tarini Debya v. Peary Lall Sanyal* (1897), 24 Calo. 646; 1 C. W. N. 378; *Koonjbehari Dhur v. Premchand Dutt* (1880), 5 Calo. 684; 5 C. L. R. 561; *Ram Narain Sing v. Pearay Bhugut* (1883), 9 Calo. 830; 13 C. L. R. 109; *Kullianbully Koer v. Tulupal Singh* (1882), 11 C. L. R. 204, at p. 207; *Prosunno Coomai Ghose v. Tarrucknath Sirkar* (1873), 10 B. L. R. 267; *Pabitra Dasi v. Damodar Jana* (1871), 7 B. L. R. 697; *Jamna Das v. Ramautar Pande* (1904), 27 All. 364; *Janki v. Bhairon* (1896), 19 All. 133; *Rudr Narain Singh v. Rup Kuar* (1878), 1

All. 734; *Gunput Singh (Baboo) v. Gunga Pershad* (1867), 2 Agra, 230; *Mulhumeenakshi Ammal v. Chendra Sekhara Ayyar* (1902), 27 Mad. 498; *Seshayya v. Narasamma* (1899), 22 Mad. 357; *Bhujanga Rau v. Ramayamma* (1884), 7 Mad. 387; *Gangadharaya v. Parameswaramma* (1869), 5 Mad. H. C. 111; *Motilal Mithalal v. Advocate-General of Bombay* (1910), 35 Bom. 279; *Ambalal v. Rewa (Bai)* (1903), 5 Bom. L. R. 334; *Kotarlaspapa v. Chanverova* (1873), 10 Bom. H. C. 403; *Harilal v. Rewa (Bai)* (1895), 21 Bom. 376; "Daya-Bhaga," chap. iv. s. i. para. 23; "Smriti Chandrika," chap. ix. s. ii. para 10; "Vyavahara Mayukha," chap. iv. s. x. para. 9; "Sarasvati Vilasa," paras. 257, 258. See *Surajmani (Musammatt) v. Rabi Nath Ojha* (1907), 35 I. A. 17; 30 All. 84; 12 C. W. N. 231; 10 Bom. L. R. 59; *Kunkia v. Mahin Lall* (1888), 10 All. 495; *Jeevun Punda v. Sona (Musammatt)* (1869), 1 N. W. P. 66; *Seth Mulchand Badharsha v. Mancha (Bai)* (1883), 7 Bom. 491; *Kesserbai (Bai) v. Hunsraj Morarji* (1906), 33 I. A. 176, at p. 137; 30 Bom. 431, at p. 442; 10 C. W. N. 802, at p. 807; 8 Bom. L. R. 446; *Chunilal v. Muli (Bai)* (1900), 2 Bom. L. R. 46; *Jairam v. Kessowjee* (1902), 4 Bom. L. R. 555. See, however, *Braja Kishera v. Kundana Devi* (1899), 1 Bom. L. R. 287.

husband, and invested by the wife in land,¹ and it is not extended to a case where a widow obtains an absolute estate by a compromise with her husband's relations.²

Provided there be a gift of an absolute estate, and a power of alienation ^{Power to} be implied, the widow can alienate the property, although there is not ^{alienate.} an express power of alienation.³

There is no presumption that a gift to a mother,⁴ daughter,⁵ or other ^{Presumption.} female relation⁶ confers a less estate than would have been conferred had she been a male, but in construing a will or deed giving property to a female it may be assumed that a Hindu knows, as a general rule, at all events, that women do not take absolute estates of inheritance which they are enabled to alienate,⁷ and the Courts will lean against a construction giving her such absolute right.⁸ The circumstance that the beneficiary is a female may throw light upon the construction of a deed or will, but it cannot destroy the effect of express words creating an absolute estate.⁹

In a case governed by the Hindu Wills Act a mere devise of immovable property, even to a wife, passes an absolute

¹ *Venkata Rama Rao v. Venkata Suriya Rao* (1880), 2 Mad. 333; *S. C. Rouvenkata Mahapati v. Mohipati Suriah* (1880), 8 C. L. R. 304.

² *Sambasiva Ayyar v. Venkataswara Ayyar* (1907), 31 Mad. 179.

³ See *Surajmani (Musammat) v. Rabi Nath Ojha* (1907), 35 I. A. 17; 30 All. 84; 12 C. W. N. 231; 10 Bom. L. R. 59; *Janki v. Bhaison* (1896), 19 All. 133, differing from *Koonjbehari Dhur v. Premchand Dutt* (1880), 5 Calc. 684; *Saroda Sundari Dassi v. Kristo Jiban Pal* (1900), 5 C. W. N. 300, at p. 303.

⁴ *Atul Krishna Sircar v. Sanyasi Churn Sircar* (1905), 32 Calc. 1051; 9 C. W. N. 784.

⁵ *Ramasami v. Papayya* (1893), 16 Mad. 466; *Kolluny Koer (Musammat) v. Luchmee Pershad* (1875), 24 W. R. C. R. 395. See *Thakur Singh v. Nokhe Singh* (1901), 23 All. 309.

⁶ *Ramjewan Lal (Lala) v. Dal Koer* (1897), 24 Calc. 406. In *Ramachandra Naiker v. Vijayaragavulu Naidu* (1908), 31 Mad. 349, there was an absolute gift to a daughter-in-law for her maintenance.

⁷ *Mahomed Shumsool Hooda (Moulvie) v. Shewukram* (1874), 2 I. A. 7, at pp. 14, 15; 14 B. L. R. 226, at pp. 231, 232; 22 W. R. C. R. 409, at p.

410; *Rudha Prosad Mullick v. Rani moni Dassi* (1908), 35 I. A. 118, at p. 129; 35 Calc. 896, at p. 902; 12 C. W. N. 729, at p. 737; 10 Bom. L. R. 601; *Mathura Das v. Bhikan Mal* (1896), 19 All. 16; *Annaji Dattatraya v. Chandrabai* (1892), 17 Bom. 503; *Nunnu Meah v. Krishnasawmi* (1890), 14 Mad. 274; *Bhoba Tarini Dehya v. Peary Lal Sanyal* (1897), 24 Calc. 646, 1 C. W. N. 578; *Seshaya v. Narasamma* (1899), 22 Mad. 357; *Lakshmi Bai v. Hirabai* (1886), 11 Bom. 69; *S. C. on appeal, Hirabai v. Lakshmi Bai* (1887), 11 Bom. 573; *Venkata Narasimha Appa Rao Bahadur (Rajah) v. Surendri Venkata Purushothama Jagannaddha Gopala Row Bahadur (Rajah)* (1908), 31 Mad. 321; cf. *Sambasiva Ayyar v. Viswam Ayyar* (1907), 30 Mad. 356; *Ganpat Rao v. Ram Chandar* (1888), 11 All. 296.

⁸ *Harilal v. Rewa (Bai)* (1895), 21 Bom. 376, at pp. 380, 381.

⁹ *Surajmani (Musammat) v. Rabi Nath Ojha* (1907), 35 I. A. 17; 30 All. 84; 12 C. W. N. 231; 10 Bom. L. R. 59. See *Ramachandra Naiker v. Vijayaragavulu Naidu* (1908), 31 Mad. 349; *Amarendra Nath Bose v. Shuradhani Dasi* (1909), 14 C. W. N. 458.

estate, unless it appears from the will that only a restricted interest was intended for her.¹

Control by husband.

Except in the case of *saudayika*,² a woman's power of disposal over her *stridhan* property is, during coverture, subject to her husband's consent, and without such consent she cannot bequeath it by will when her husband survives her, unless he consents to the will.³

The "Smriti Chandrika"⁴ says "it must be concluded that women possess independent power only over *saudayika* and over their husband's donation, except immovables, and that their power is not independent over other sorts of property, although they may be *stridhana*."

"Acquisitions made by a woman by the practice of a mechanical art are subject to the control of the husband, who appears to be entitled to the fruits of the wife's bodily labour."⁵ That is, she cannot alienate it without his consent, and he can use it.⁶ Katyana says: "The wealth which is earned by mechanical arts, or which is received through affection from a stranger, is subject to her husband's dominion. The rest is pronounced to be woman's property."⁷

Although there is no provision as to what is to become of "what is earned by mechanical arts or what is received through affection through a stranger,"⁸ where the woman predeceases her husband, Sir G. D. Banerjee considers that Jagannatha's opinion⁹ should be followed, and that the property devolves upon the woman's *stridhan* heirs according to the "*Mitakshara*."¹⁰

Power of husband.

A husband can in times of pressing need,¹¹ and then only,¹² use his wife's *stridhana* of any kind without her consent.

¹ Act XXI. of 1870, s. 2, applying Act X. of 1865 (Ind. Succession Act), s. 82; *Bhoba Turim Debya v. Peary Lal Sanyal* (1897), 24 Cal. 646; 1 C. W. N. 578; *Saroda Sundari Dass v. Kristo Jiban Pal* (1900), 5 C. W. N. 300. See *Caralapati Chumna Cunniah v. Cota Nammalwarrah* (1909), 33 Mad. 91.

² *Ante*, pp. 425, 426.

³ *Bhau v. Raghunath Krishna Garav* (1905), 30 Bom. 229; 7 Bom. L. R. 936.

⁴ Chap. ix. s. ii. para. 12.

⁵ G. C. Sircar's "Hindu Law," 3rd ed., p. 365. See "*Viramitrodaya*" (G. C. Sircar's translation), p. 222; "*Vyavahara Mayukha*," chap. ix. s. x. para. 7; "*Daya-Bhaga*," chap. iv. s. i. paras. 19, 20.

⁶ Banerjee's "*Law of Marriage*," 2nd ed., p. 319.

⁷ "*Smriti Chandrika*," chap. ix. s. i. para. 16; "*Daya-Bhaga*," chap.

iv. s. i. para. 19; "*Daya-Tattwa*," chap. ix. para. 1; "*Daya-Krama-Sangraha*," chap. ii. s. ii. para. 25.

⁸ *Ante*, p. 423.

⁹ Colebrooke's "*Digest*," vol. iii. p. 629.

¹⁰ "*Law of Marriage*," 2nd ed., pp. 439, 440.

¹¹ See *Mohima Chunder Roy v. Durga Monee* (1875), 23 W. R. C. R. 184; *Tukuram v. Gunaji* (1871), 8 Bom. H. C. A. C. 129; "*Mitakshara*," chap. ii. s. 11, paras. 32, 33; "*Daya-Bhaga*," chap. iv. s. 1, paras. 19-25; "*Vivada Chintamani*" (Tagore's translation, pp. 264, 265; "*Vyavahara Mayukha*," chap. iv. s. 10, paras. 7-10; "*Smriti Chandrika*," chap. ix. s. 2, para. 14; Banerjee's "*Law of Marriage*," 2nd ed., pp. 315 *et seq.*

¹² *Sooda Ram Dass v. Joogul Kishore Goopto* (1875), 24 W. R. C. R. 274; *Mohima Chunder Roy v. Durga Monee* (1875), 23 W. R. C. R. 184.

His creditors have no such right.¹ He is bound if he has means to reimburse her for the amount so expended.²

A widow has complete control over her *stridhan* property ^{Rights of widow.} of every kind and whensoever acquired.³

¹ *Rudha (Mussunat) v. Bisheshur Dass* (1875), 6 N. W. P. 279; *Tukaram v. Gunaji* (1871), 8 Bom. H. C. A. C. 129; *Hammuckah v. Rungapah* (1808), Strange's "Hindu Law," ii. 23.

² Banerjee's "Law of Marriage," 2nd ed., pp. 315-318. •

³ Colebrooke's "Digest," vol. iii. p. 628; *Kullammal, Doe dem v. Kuppu Pillu* (1862), 1 Mad. H. C. 85; *Brj Indar Bahadur Singh v. Janki Koei (Ranee)* (1877), 5 I. A. 1, at p. 15; 1 C. L. R. 318, at pp. 325, 326; *Venkata Rama Rau v. Venkata Suriya Rau* (1877), 1 Mad. 281, at p. 286.

CHAPTER XIV.

INHERITANCE TO STRIDHAN PROPERTY.

INHERITANCE to property held absolutely by a woman is not governed by the rules which govern inheritance to the property of a male.

It is only by the death of the woman that the heir succeeds; no one acquires by birth any interest in *stridhan* property.¹

As to the inheritance to property which has been inherited by a woman from a male, see *ante*, p. 351, and *post*, p. 448.

Principle.

The inheritance to a woman's property varies to some extent according to the source from which the property comes. It depends upon express texts, and is founded on nearness of kin, preference being in some cases given to female descendants.

The doctrine of spiritual benefit has no application to the succession to *stridhana* in the Mitakshara school; ² and even in the Bengal school that doctrine only applies to remote relations.³

When the form of the *stridhan* property has been changed by exchange, sale, or otherwise, succession to the proceeds will be the same as the succession to the original property.

Maiden's Property.

Maiden.

The schools do not differ as to the property of a maiden. It passes in the following order:—

1. Uterine brothers.
2. Mother.
3. Father.⁴

¹ "Smriti Chandrika," chap. ix. s. iii. para. 9.

² *Ganga Jati (Musammat) v. Ghasita* (1875), 1 All. 46, at pp. 49, 50.

³ *Ibid.*; *Toolsee Dass Seal v. Luckhymoney Dasee (Sm)* (1900), 4 C. W. N. 743; *Nogendra Nandini*

Dassi v. Benoy Krishna Deb (1902), 30 Calc. 521, at p. 527; 7 C. W. N. 121, at p. 125.

⁴ "Daya-Bhaga," chap. iv. s. iii. para. 7; "Mitakshara," chap. ii. s. xi. para. 30; "Smriti Chandrika," chap. ix. s. iii. para. 35; "Vyava-

4. Her nearest relations.¹

Thus a sister is preferred to a father's brother's son,² and a father's mother's sister to a maternal grandmother.³ As to a paternal grandmother, see *Gandhi Maganlal v. Jadab (Bai)* (1899), 24 Bom. 192; 1 Bom. L. R. 574.

Under the Mitakshara, and the Mayukha, a father's sister in Bombay is preferred to a remote *sapinda*.⁴

When a maiden dies after betrothal, the bridegroom is entitled to the presents given by him after deducting all expenses incurred by himself or by the parent or other guardian of the damsel.⁵ Failing the bridegroom, such presents are said to devolve upon her heirs,⁶ as above. Presents by bridegroom.

Devolution of Stridhan according to the "Mitakshara."

Under the "Mitakshara," the property of a married woman devolves as follows:— Married woman's property.

I. *Sulka*⁷ apparently goes first to the mother and then to the uterine brothers,⁸ but it is not quite settled whether the mother does not succeed the brothers. Mitakshara. Sulka.

On this subject there is a difference of opinion as to the proper translation of a text of Gautama. According to the "Mitakshara"⁹ and the "Mayukha,"¹⁰ it is translated: "The sister's fee belongs to the uterine brothers; after (the death of) the mother." According to the "Viramitrodaya,"¹¹ the "Smriti Chandrika,"¹² the "Daya-Bhaga,"¹³ and the "Chintamani,"¹⁴ it reads: "The sister's fee belongs to the uterine brothers;

hara Mayukha," chap. iv. s. x. para. 34; "Vivada Chintamani" (P. C. Tagore's translation), p. 270; *Narasayya v. Venkayya*, 2 Mad. L. J. 149, referred to in *Venkatarama Krishna Rau v. Bhujanga Rau* (1895), 19 Mad. 107, at p. 109.

¹ See *Dwarka Nath Roy v. Sarat Chandra Singh Roy* (1911), 15 C. W. N. 1036.

² *Ibid.*

³ *Janglubai v. Jetha Appaji Marwadi* (1908), 32 Bom. 409; 10 Bom. L. R. 522; *Gandhi Maganlal v. Jadab (Bai)* (1899), 24 Bom. 192, at p. 212; 1 Bom. L. R. 574; "Viramitrodaya" (G. C. Sircar's translation), p. 241. See Banerjee's "Law of Marriage," 2nd ed., p. 424.

⁴ *Tukaram v. Narayan* (1911), 14 Bom. L. R. 89.

⁵ "Mitakshara," chap. ii. s. xi. paras. 34, 35; "Daya-Krama-Sangraha," chap. ii. s. i. para. 2; "Smriti

Chandrika," chap. ix. s. iii. para. 34; "Vyavahara Mayukha," chap. iv.; s. x. para. 33; Colebrooke's "Digest," iii. p. 624; Strange's "Hindu Law," vol. i. p. 38.

⁶ "Vyavastha Darpana," 2nd ed., p. 733.

⁷ *Ante*, pp. 421, 422.

⁸ "Mitakshara," chap. ii. s. xi. para. 14, Colebrooke's note.

⁹ Chap. ii. s. xi. para. 14.

¹⁰ Chap. iv. s. x. para. 32. Sastri G. C. Sircar ("Hindu Law," 3rd ed., p. 413) says: "The reason is that it originally belonged to the parents; but later on it was declared to be the bride's *stridhan*; and this rule of succession appears to be a compromise between the original and the later views."

¹¹ G. C. Sircar's translation, p. 242.

¹² Chap. ix. s. iii. paras. 32, 33.

¹³ Chap. iv. s. iii. paras. 27, 28.

¹⁴ P. C. Tagore's translation, p. 270.

after (them) it goes to the mother." As to this, Sir G. D. Banerjee¹ says : " Even in the ' Mitakshara ' it would appear from the context that it is understood in the same sense, for the uterine brothers are mentioned as the first among the heirs." Sastri G. C. Sircar² and Dr. Jogendranath Bhattacharya³ also take the view that the brothers succeed first even according to the " Mitakshara " ; see also Cunningham's " Hindu Law," p. 119.

The texts are silent as to the devolution of this kind of *stridhan* on failure of mother and brothers. It would apparently go to the persons who succeed to other kinds of *stridhan*.

Other *stridhan*
property.

II. Other *stridhan* property⁴ devolves, if she has children, as follows :—

Daughter.

1. Unmarried daughter.⁵
2. Married daughter who is " unprovided for,"⁶ i.e. who is either indigent or childless.⁷
3. Married daughter who is " provided for " whether she has a son or not.⁸

As regards the relative claims of childless, well-to-do daughters and indigent daughters, Sir G. D. Banerjee⁹ says thus : " I think Vijnanesvara's meaning is that the rich daughters, whether they have children or not, should all be excluded by the indigent daughters, whether they are childless or have children. And I presume that the childless daughters would be preferred to those having issue only when the competitors are not poor, and their means and circumstances are equal." In the case of daughters who are poor in different degrees, no hard and fast rule can be laid down ; but a Court of Justice should look to the circumstances of each case, and order distribution accordingly."

It has been held that comparative poverty is the only criterion settling the claims of daughters *inter se*.¹⁰ In one case¹¹ the Bombay High Court

¹ " Hindu Law of Marriage," 2nd ed., p. 365.

² " Vyavastha Chandrika," vol. ii. pp. 523, 550.

³ " Hindu Law," 2nd ed., p. 578.

⁴ *Salemma v. Lutchmana Reddi* (1897), 21 Mad. 100. As to inherited property in the Bombay Presidency, see *post*, p. 451.

⁵ Whether then betrothed or not, Banerjee's " Law of Marriage," 2nd ed., p. 342.

⁶ The expression is irrespective of the sources of provision, *Danno v. Darbo* (1882), 4 All. 243.

⁷ " Mitakshara," chap. ii. s. xi. para. 13 ; " Vyavahara Mayukha," chap. iv. s. x. paras. 20-23 (referring to *yautaka stridhan*), *post*, p. 436.

⁸ *Binode Koomaree Dabee v. Purdhan Gopal Sahae* (1865), 2 W. R.

C. R. 176, at p. 177 ; *Muthappudayan v. Ammani Ammal* (1897), 21 Mad. 58. " It is explained by Apararka and the author of the *Kalpataru* that ' unprovided ' means childless, indigent, neglected (by the husband), or widowed. Vijnanesvara and others attach to the term the first two of the above meanings." " Viramitrodaya " (G. C. Sircar's translation), p. 231.

⁹ " Law of Marriage," 2nd ed., at p. 342.

¹⁰ *Poli v. Narotum Bapu* (1869), 6 Bom. H. C. A. C. 183 ; *Audh Kumari v. Chandra Dai* (1879), 2 All. 561.

¹¹ *Bakubai v. Manchhabai* (1864), 2 Bom. H. C. 5, followed in *Poli v. Narotum Bapu* (1869), 6 Bom. H. C. A. C. 183.

directed an issue as to whether the pecuniary circumstances of the daughters—one being a widow, and the other married—were so far different as to give the widow a prior right of inheritance over the daughter whose husband was alive, on the ground that she was an "unprovided" daughter.

Sir G. D. Banerjee¹ says that "barren and childless widowed daughters are actually preferred to those who have or are likely to have male issue, when the means and circumstances of the competitors are equal."

The rule as to the preference of unendowed before endowed daughters cannot be extended to other female relations such as sisters in Bombay.²

It has been held in Madras that, where several daughters inherit *stridhan* property, on the death of one her interest passes to the survivors³ as heirs of their mother. Right of survivors.

A prostitute daughter would apparently come after all other daughters.⁴

4. Daughter's daughter.⁵

Daughter's daughter.

They take *per stirpes*.⁶

5. Daughter's son.⁷

Daughter's son.
Son.

6. Son.⁸

As to stepsons, see *post*, p. 435. "Sons" exclude son's sons, whose father is dead.

It has been held in Madras that there is no benefit of survivorship between co-heirs inheriting *stridhan* property, and that sons take as tenants in common, not as joint tenants, even if they be members of a joint Mitakshara family;⁹ but it is submitted that where the sons, or other male

¹ "Law of Marriage," 2nd ed., p. 343.

² *Bhagirthiba v. Baya* (1881), 5 Bom. 264.

³ *Sengamalathammal v. Valaynda Mudali* (1867), 3 Mad. H. C. 312, at p. 317. This is disputed by Sir G. D. Banerjee ("Law of Marriage," 2nd ed., pp. 347, 348).

⁴ See *Tara v. Krishna* (1907), 3 F Bom. 495; 9 Bom. L. R. 774, *post*, pp. 446, 447, and *ante*, p. 372.

⁵ "Mitakshara," chap. ii. s. xi. para. 15; "Smriti Chandrika," chap. ix. s. iii. para. 21; "Manu," chap. ix. para. 193; *Subramanian Chetti v. Arunachelam Chetti* (1904), 28 Mad. 1.

⁶ "Mitakshara," chap. ii. s. xi. para. 16, *ante*, p. 351; W. Macnaghten's "Hindu Law," p. 121.

⁷ "Mitakshara," chap. ii. s. xi. para. 18; "Vyavahara Mayukha," chap. iv. s. x. para. 20. Sir G. D. Banerjee's "Law of Marriage," 2nd

ed., p. 356, considers that this does not include the adopted son of a daughter.

⁸ *Karuppal Nachiar v. Sankaranarayanan Chetty* (1903), 27 Mad. 300; "Mitakshara," chap. ii. s. xi. para. 19. The difference between the Benares and the Bengal school (*post*, p. 441) in the rights of sons arises from different constructions of "Manu," chap. ix. para. 192. See Banerjee's "Law of Marriage," 2nd ed., pp. 351, 352. As to the rights of an adopted son, see *ante*, pp. 174, 175. The share of an adopted son in case of the birth of a legitimate son after the adoption, is apparently the same as in the case of inheritance to males (*ante*, pp. 180, 181; Banerjee's "Law of Marriage," pp. 354, 356).

⁹ *Karuppal Nachiar v. Sankaranarayanan Chetty* (1903), 27 Mad. 300.

co-heirs, hold the property jointly and are members of a Mitakshara joint family, there is a right of survivorship.¹

Son's son:

7. Son's son.²

Grandsons by different sons inherit *per stirpes*, and not *per capita*.³

There is authority that the adopted son of a natural son in competition with another natural son takes only the share which his father would have had had he been an adopted son.⁴

Succession to childless woman.

The succession to a childless woman depends upon the form of the woman's marriage.

If married in *Brahma* form.

If she has been married in the *Brahma* form,⁵ and the marriage will be presumed as being in that form,⁶ (even in the case of Sudras if the parties belong to a respectable family),⁷ the property goes to her husband,⁸ and after him to his nearest *sapindas*, in order ⁹ of their rights of succession to him.

The order of succession after the husband is to some extent the subject of dispute.¹⁰ Sir G. D. Banerjee¹¹ accepts Kamalakara's interpretation of

¹ See *Venkayamma Garu (Raja Chelikani) v. Venkataramanayamma (Raja Chelikani)* (1902), 29 I. A. 156, at p. 165; 25 Mad. 678, at p. 687; 7 C. W. N. 1, at p. 8; 4 Bom. L. R. 657; *Katama Natchiar v. Shivagunga (Rajah of)* (1863), 9 M. I. A. 543, at p. 615; 2 W. R. P. C. 31, at pp. 39, 40; "Mitakshara," chap. i. s. iv. para. 2; Colebrooke's "Digest," vol. iii. p. 603; *ante*, pp. 230-232.

² "Mitakshara," chap. ii. s. xi. para. 24.

³ "Smriti Chandrika," chap. ix. s. iii. para. 25; "Vyavastha Chandrika," vol. ii. pp. 535, 552. See *ante*, p. 351.

⁴ *Raghubanund Doss v. Sadhu Churn Doss* (1878), 4 Calc. 425; 3 C. L. R. 534; "Dattaka Chandrika" (Bharat Chandra Siromani's edition), p. 30, referred to in Banerjee's "Law of Marriage," p. 358, note 4.

⁵ *Ante*, p. 50.

⁶ *Jagannath Prosad Gupta v. Runjit Singh* (1897), 25 Calc. 354; *S. Authikesavulu Chetty v. S. Ramaswami Chetty* (1909), 32 Mad. 512; *In Moosa Haji Joonas v. Abdul Rohim; Haji* (1905), 30 Bom. 197, at p. 203; 7 Bom. L. R. 147, Jenkins, C. J., said:

"The legal consequences of the classes of marriage, the approved and the disapproved vary according as their leading characteristics are blame-worthy or not, and suggest the inference that it is the quality and not the form of the marriage that decides the course of devolution." In that case a marriage by Cutchi Memons was treated as being in the approved form, and the same reasoning would apply to marriages by Brahmins and other Hindus, who do not marry according to strict Hindu forms.

⁷ *Jagannath Raghunath v. Narayan* (1910), 34 Bom. 553; 12 Bom. L. R. 545.

⁸ See *Bhau v. Raghunath* (1905), 30 Bom. 229; 7 Bom. L. R. 936. He takes before a stepson; *Bhimacharya v. Ramacharya* (1909), 33 Bom. 452; 11 Bom. p. 654.

⁹ "Mitakshara," chap. ii. s. xi. para. 11; *Jagannath Prosad Gupta v. Runjit Singh* (1897), 25 Calc. 354; *Champat v. Shiba* (1886), 8 All. 393.

¹⁰ G. D. Banerjee's "Law of Marriage," 2nd ed., pp. 360-364.

¹¹ *Ibid.* p. 364.

the "Mitakshara," according to which "the successive heirs after the husband would be the stepson,¹ the step grandson,² the rival wife,³ the step daughter,⁴ her son, the husband's mother, his father, his brothers,⁵ their sons,⁶ and the husband's other *gotraja sapindas* and *bandhus* in the order in which they inherit his property."

The husband's sister's sons are preferred to the husband's paternal great grandfather's great grandsons,⁷ and to the woman's own sister's sons.⁸

The husband's brother's daughter's son comes before the sister's daughter's son.⁹

A remote *sapinda* of the husband was held entitled to succeed in *Champat v. Shiba* (1886), 8 All. 393.

If she has been married in the *Asura* form¹⁰ (or apparently *If married in Asura form.* if in any local or special form¹¹) the *stridhan* of a childless married woman goes to her mother, then to her father, and then to her father's next of kin, and failing them to the mother's next of kin.¹²

The sister is preferred to the sister's son¹³ in Madras, and the father's sister is preferred to the mother's brother.¹⁴

Devolution of Stridhan according to the "Mayukha."

According to the "Mayukha," the *stridhan* property of a "Ma. ukha." married woman devolves as follows :—

¹ In *Brahmappa v. Papanna* (1889), 13 Mad. 138, the stepson was preferred to the sister's son; "Smriti Chandrika," chap. ix. s. iii. para. 38. See, however, Mayne's "Hindu Law," 7th ed., p. 895.

² *Gojabai v. Shakhajirao Maloji Raje Bhosle (Shrimant)* (1892), 17 Bom. 114.

³ *Kesserbai (Bai) v. Hunsraj Morarji* (1906), 33 I. A. 176; 30 Bom. 431; 10 C. W. N. 802; 8 Bom. L. R. 446, in preference to husband's brother or his son; *Krishnai v. Shripati* (1905), 30 Bom. 333; 8 Bom. L. R. 12, in preference to grandsons of husband's father's brother.

⁴ Sir G. D. Banerjee ("Law of Marriage," 2nd ed., p. 388) considers that stepdaughters come before stepsons.

⁵ Full brothers being preferred to

half-brothers, *Parmappa v. Shiddappa* (1906), 30 Bom. 607.

⁶ *Bachha Jha v. Jugmon Jha* (1885), 12 Calc. 348 (a Mithila case).

⁷ *Mohun Pershad Narain Singh v. Kishen Kishore Narain Singh* (1893), 21 Calc. 344 (a Mithila case).

⁸ *Ganeshi Lal v. Ajudhia Prasad* (1906), 28 All. 345.

⁹ *Venkatasubramaniam Chetti v. Thayarammah* (1898), 21 Mad. 203.

¹⁰ *Ante*, pp. 50, 51.

¹¹ *Ante*, pp. 52, 53.

¹² "Mitakshara," chap. ii. s. xi. para. 11. See *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244.

¹³ *Raju Gramany v. Ammani Ammal* (1906), 29 Mad. 358.

¹⁴ *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at p. 261.

Sulka. I. *Sulka* devolves in the same way as according to the "Mitakshara."¹

Gifts by relations after marriage, and gifts by husband. II. *Anwadeyika stridhana*² (gifts subsequent to marriage) and *pritudatta* (gifts by the husband on account of affection) go to sons³ and unmarried daughters in equal shares. Failing unmarried daughters the property goes to sons and married daughters in equal shares.⁴

Failing sons and daughters, daughter's children, and failing them, son's sons apparently become heirs.⁵

Compensation given by the husband to the wife on his taking another wife⁶ would also apparently follow the same rule—at any rate, sons would not be preferred to daughters.⁷

Yautaka stridhan. III. *Yautaka stridhana*⁸ goes to the maiden daughters alone in the first instance.⁹

The further succession of this kind of property would apparently be as according to the "Mitakshara,"¹⁰ but it is said¹¹ that in respect of property given by the kindred at an *asura* marriage, "That which has been given to her by her kindred goes on failure of kindred to her son."

Other property. IV. Property acquired in other ways goes to the sons, grandsons, and great grandsons, even if there be daughters.¹² After them come daughters and their issue.

In those parts of the Bombay Presidency where the "Mayukha" is paramount, namely, in Gujerat, in the Northern Konkan, and in the island of Bombay, such inherited property as a woman takes absolutely¹³ passes in the same way.¹⁴

¹ *Ante*, pp. 431, 432; "Vyavahara Mayukha," chap. iv. s. x. para. 32.

² *Ante*, p. 422. See *Sitabai v. Wasantrao* (1901), 3 Bom. L. R. 201.

³ Who are born to her by her husband, *Jagannath Raghunath v. Narayan* (1910), 34 Bom. 553; 12 Bom. L. R. 545.

⁴ "Vyavahara Mayukha," chap. iv. s. x. paras. 13, 15; *Dayaldas Laldas v. Savitribai*. (1909), 34 Bom. 385; 12 Bom. L. R. 386; *Sitabai v. Wasantrao* (1901), 3 Bom. L. R. 201; *Ashabai v. Tye Hajji Rahimtulla (Haji)* (1882), 9 Bom. 115.

⁵ "Vyavahara Mayukha," chap. iv. s. x. para. 20. See Banerjee's "Law of Marriage," 2nd ed., p. 371.

⁶ *Ante*, p. 422.

⁷ See "Vyavahara Mayukha," chap. iv. s. x. para. 24.

⁸ *Ante*, p. 420.

⁹ "Vyavahara Mayukha," chap. iv. s. x. para. 17.

¹⁰ *Ante*, pp. 434, 435.

¹¹ "Vyavahara Mayukha," chap. iv. s. x. para. 31.

¹² "Vyavahara Mayukha," chap. iv. s. x. para. 26; *Manilal Rewaqdat v. Rewa (Bai)* (1892), 17 Bom. 759; *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at pp. 260, 261.

¹³ *Post*, p. 451.

¹⁴ "Vyavahara Mayukha," chap. iv. s. x. para. 26; *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at p. 261; *Bhagirthibai v.*

In those parts of the Bombay Presidency where the "Mitakshara" is paramount, namely, in the Mahratta country and in the Southern Konkan and Northern Kanara, the property descends to the daughters to the exclusion of her sons.¹

"It seems quite reasonable to lay down that as regards that class of property which is emphatically woman's property, being expressly so named by the old sages, the female offspring shall take precedence over the male; while as regards that which is not such, the general preference given to the male offspring over female by Hindu law should have effect. On the other hand, there is no obvious reason why in the case of collateral relations any similar distinction should be maintained between the two classes."²

In the case of *stridhan* of all kinds³ the succession to a childless woman depends upon the form of the woman's marriage. Succession to childless woman.

If she has been married in the *Brahma* form,⁴ and there be no issue of the marriage,⁵ the property goes to her husband; and failing him, to his *sapindas* in the order in which they inherit to him.⁶ If married in Brahma form.

The above has been deduced from the view expressed in *Manilal Rewadat v. Rewa (Bai)*⁷ that, except so far as the succession of children is concerned, there is, according to the "Mayukha," no difference between the succession to the different kinds of *stridhan* property. Earlier cases had held that in the case of inherited property the property devolved (independently of the form of marriage) as if the deceased woman were a male⁸ and the only son of her father. This would coincide with the succession in the case of the marriage being in the *Asura* form.⁹

Kahnurjirav (1886), 11 Bom. 285, at pp. 303, 310; *Gandhi Maganlal Motichand v. Jadab (Bai)* (1899), 24 Bom. 192; 1 Bom. L. R. 574; *Gulappa Domingappa Kusugal v. Tayawa* (1907), 31 Bom. 453; 9 Bom. L. R. 834.

¹ *Jankibai v. Sundra* (1890), 14 Bom. 612; *Gulappa Domingappa Kusugal v. Tayawa* (1907), 31 Bom. 453. See ante, pp. 431-434, as to inheritance according to the Mitakshara.

² *Manilal Rewadat v. Rewa (Bai)* (1892), 17 Bom. 758, at pp. 769, 770.

³ *Ibid.*, at p. 769. See *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at p. 260.

⁴ *Ante*, p. 50. As to Cutchi Memon, see *Moosa Haji Joona Noorani v. Abdul Rahim (Haji)* (1905), 30 Bom. 197; 7 Bom. L. R. 447.

⁵ *Jagannath Raghunath v. Na-*

rayan (1910), 34 Bom. 553; 12 Bom. L. R. 545.

⁶ "Vyavahara Mayukha," chap. iv. s. x. paras. 28, 30; *Kesserbai (Bai) v. Hunsraj Morarji* (1906), 33 I. A. 176, at p. 197; 30 Bom. 431, at pp. 451, 452; 10 C. W. N. 802, at pp. 813, 814; 8 Bom. L. R. 446. *Bachha Jha v. Jugmon Jha* (1885), 12 Calc. 348, at p. 355. This will include the wives of *gotraja sapindas* (ante, pp. 396, 397), see *Narmada (Bai) v. Bhagwantrao* (1888), 12 Bom. 505.

⁷ (1892), 17 Bom. 758, at pp. 761, 765.

⁸ *Narmada (Bai) v. Bhagwantrao* (1888), 12 Bom. 505; *Dalpat Narotam v. Bhagwan Khushal* (1886), 9 Bom. 301, at p. 304; *Vijiarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at pp. 260, 261. See also Mayne's "Hindu Law," 7th ed., p. 835.

⁹ *Post*, p. 498.

The husband's son is preferred to the co-widow and to the husband's nephew.¹ The husband's brother comes before the husband's brother's son.²

A co-widow comes before the husband's brother or brother's son,³ and a daughter-in-law before the daughter of a deceased daughter.⁴

The son of a stepdaughter is an heir of the widow.⁵

As the "Mitakshara" and the "Mayukha" include in the expression "*sapinda*" any relation within the seventh degree from descent from a common ancestor,⁶ kinsmen up to that degree will succeed.⁷ There is authority that a daughter's grandson and a husband's sister are heirs.⁸

It is unsettled whether *samanodokas*⁹ succeed, but Sir G. D. Banerjee¹⁰ inclines to the opinion that they will so succeed.

Where there is a failure of the husband's relations, Messrs. West and Bühler,¹¹ consider that her own relations succeed, whether before or after her husband's *samanodokas* it is not clear. Sir G. D. Banerjee inclines to the same opinion.¹²

A father's sister is preferred to a mother's brother,¹³ and a father's sister's son to a father's sister's son's son.¹⁴

If married in
Asura form.

If the woman was married in the *Asura* (or apparently in any local or special) form of marriage, the property goes to her mother, then to her father;¹⁵ and failing them, to her father's *sapindas* in order of their succession to him.

Devolution of Stridhan according to the "Smriti Chandrika."

"Smriti
Chandrika,"

According to the "Smriti Chandrika," which is of considerable authority in Southern India,¹⁶ the *stridhan* property of a married woman devolves as follows :—

¹ *Gajabai v. Shahajirao Maloji Raje Bhosle (Shrimant)* (1892), 17 Bom. 114.

² *Hunsraj v. Monghiba (Bai)* (1905), 7 Bom. L. R. 622.

³ *Kesserbai (Bai) v. Hunsraj Morarji* (1906), 33 I. A. 176; 30 Bom. 431; 10 C. W. N. 802; 8 Bom. L. R. 446.

⁴ *Narmada (Bai) v. Bhagwantrao* (1888), 12 Bom. 505.

⁵ *Motiram Succram v. Mayaram Barkatram*, Bom. P. J. for 1880, p. 119.

⁶ "Mitakshara," chap. ii. s. v. para. 6; "Vyavahara Mayukha," chap. iv. s. viii. paras. 18, 19. See *ante*, p. 363.

⁷ Banerjee's "Law of Marriage," 2nd ed., p. 376.

⁸ West and Bühler, 2nd ed., pp. 242, 243.

⁹ *Ante*, pp. 363, 364.

¹⁰ "Law of Marriage," 2nd ed., pp. 376-378.

¹¹ "Hindu Law," 2nd ed., pp. 244 *et seq.*

¹² "Law of Marriage," pp. 378, 379.

¹³ *Vijjarangam v. Lakshuman* (1871), 8 Bom. H. C. O. C. 244, at pp. 260, 261.

¹⁴ *Dalpat Narotam v. Bhagvan Khushal* (1885), 9 Bom. 301.

¹⁵ "Vyavahara Mayukha," chap. iv. s. x. para. 28; "Mitakshara," chap. ii. s. xi. para. 11; *Kesserbai (Bai) v. Hunsraj Morarji* (1906), 33 I. A. 176, at p. 197; 30 Bom. 431, at pp. 451, 452; 10 C. W. N. 802, at pp. 813, 814; 8 Bom. L. R. 446.

¹⁶ It does not supersede the "Mitakshara," *Raju Gramany v. Ammani Ammal* (1906), 29 Mad. 358.

I. The *sulka* goes to the uterine brothers in preference to *Sulka*. the mother.¹

If the woman has issue.

II. The *Anwadeya* (or *Anwadeyika*) *stridhana*² and the *prtidatta stridhan*³ devolve, as in the case of the "*Mayukha*,"⁴ except that widowed daughters are excluded from inheriting this kind of *stridhan*,⁵ and that widows of *gotraja sapindas* have none of the rights which they have under the Bombay system.⁶

III. *Yautaka*.⁷

This goes first to the maiden daughter and subsequently as under the "*Mitakshara*."⁸

IV. Other kinds of *stridhan*.

The daughters who are unmarried and those who are "unprovided for"⁹ first succeed,¹⁰ the subsequent succession being as under the "*Mitakshara*,"¹¹

Under the Madras system the widows of *gotraja sapindas* do not take, therefore neither the brother's widow¹² nor the daughter-in-law¹³ takes as heir.

Devolution of Stridhan according to the Mithila School.

According to the Mithila school the succession to a married Mithila school woman is as follows:—

I. *Sulka* goes first to the uterine brothers, then to the *Sulka*. mother, and then to the father.¹⁴

II. Nuptial gifts (*parinayya*), which are described as

¹ "*Smṛiti Chandrika*," chap. iv. s. iii. para. 33; cf. *ante*, pp. 431, 432, 436, and *post*, p. 443.

² Gifts subsequent to marriage, see *ante*, p. 436.

³ Gifts by husband on account of affection, *ante*, p. 423.

⁴ *Ante*, p. 436; "*Smṛiti Chandrika*," chap. ix. s. iii. paras. 1-11; Banerjee's "*Law of Marriage*," 2nd ed., pp. 384, 385.

⁵ "*Smṛiti Chandrika*," chap. ix. s. iii. para. 9.

⁶ *Ante*, pp. 396, 397, 437; *Thayammal v. Annamalai Mudali* (1895), 19 Mad. 35; *Bandam Settah v.*

Bandam Maha Lakshmy (1868), 4 Mad. H. C. 180.

⁷ Gifts at the time of marriage.

⁸ *Ante*, pp. 432-435.

⁹ *Ante*, pp. 432, 433.

¹⁰ "*Smṛiti Chandrika*," chap. ix. s. iii. para. 17.

¹¹ *Ante*, pp. 432-435; "*Smṛiti Chandrika*," chap. ix. s. iii. paras. 20-24, 29-32.

¹² *Thayammal v. Annamalai Mudali* (1895), 19 Mad. 35.

¹³ *Bandam Settah v. Bandam Maha Lakshmy* (1868), 4 Mad. H. C. 180.

¹⁴ "*Vivada Chintamani*" (P. C. Tagore's translation), p. 270.

"furniture, such as a mirror, combs, and so forth," are shared by the daughters; and failing them, by the sons.¹

This apparently applies to all *yautaka stridhan*—at any rate, in the case of the woman being married in the *Brahma* form.²

Other
stridhan.

III. Other kinds of *stridhan* property are shared by the sons and unmarried daughters equally.³

Daughters who are "unprovided for"⁴ apparently take as if they were unmarried.⁵ Failing daughters, sons apparently succeed.⁶ According to the "*Ratnakara*,"⁷ daughter's daughters and daughter's sons come before sons.

Childless
woman.

The succession to a childless woman is as in accordance with the "*Mitakshara*."⁸

According to the "*Madana Parijata*,"⁹ a co-wife's daughter or daughter's son is an heir.

According to the Mithila school, the sons of half sisters succeed.¹⁰

Kritrima
adoption.

A son adopted by a woman according to the *Kritrima* form inherits her *stridhan* property.¹¹

Devolution of Stridhan according to the Bengal School.

Bengal school.

The property (except the *sulka*)¹² of a married woman having children devolves as follows:—

Yautaka.

I. *Yautaka stridhan*.¹³

1. Unbetrothed daughters.

2. Betrothed daughters.¹⁴

¹ "*Vivada Chintamani*" (P. C. Tagore's translation), pp. 268, 269.

² *Ibid.*, p. 268.

³ *Ibid.*, p. 266.

⁴ *Ante*, pp. 432, 433.

⁵ See "*Vivada Chintamani*" (P. C. Tagore's translation), p. 267.

⁶ *Ibid.*, p. 268.

⁷ Table of succession in Tagore's translation of "*Vivada Chintamani*," p. xcvi.

⁸ *Ante*, pp. 434, 435; "*Vivada Chintamani*" (P. C. Tagore's translation), p. 269. See *Bachha Jha v. Jugmon Jha* (1885), 12 Calc. 348. The construction of Brihaspati's text by the Judicial Committee in *Kesserbai (Bas) v. Huneraj Morarji* (1906), 33 I. A. 176, at p. 197; 30 Bom. 431, at

pp. 451, 452; 10 C. W. N. 802, at pp. 813, 814; 8 Bom. L. R. 446, will apply to Mithila cases. This view does not agree with the views expressed in *Mohun Pershad Narain Singh v. Kishen Kishore Narain Singh* (1893), 21 Calc. 344.

⁹ Table of Succession in P. C. Tagore's translation of "*Vivada Chintamani*," p. xevi.

¹⁰ *Sreenarain Rai v. Bhya Jha* (1812), 2 Ben. Sel. R. 23, at pp. 27, 28; (2nd ed., 29, at p. 35).

¹¹ See *ante*, p. 195.

¹² *Post*, p. 443.

¹³ *Ante*, p. 420.

¹⁴ "*Daya-Bhaga*," chap. iv. s. ii. para. 23; "*Daya-Krama Sangraha*," chap. ii. s. iii. para. 5.

3. Married daughters having, or likely to have, male issue.¹
4. Barren and childless widowed daughters.²
5. Sons.³
6. Daughter's sons.⁴

The son of a daughter's son⁵ and a daughter's daughter⁶ do not succeed to *stridhan* property according to the Bengal school.

7. Son's son.
8. Son's grandson in the male line.⁷
9. Stepson.⁸
10. Son's son of a co-wife.
11. Son's son's son of a co-wife.⁹

II. Property given to a woman by her father at any time ^{Given by father.} other than at the time of the marriage (*Pitridatta ayautaka stridhana*).¹⁰

1. The unmarried daughter.¹¹
2. Son.¹²
3. The daughter having or likely to have a son.
4. Daughter's son.
5. Son's son.¹³
6. Son's son's son.

¹ This includes a widow having a dumb son who is incompetent to inherit (*ante*, pp. 354, 355), *Charu Chunder Pal v. Nobo Sunderi Dasi* (1891), 18 Calc. 327.

² Note to "Daya-Bhaga," chap. iv. para. 23 (Colebrooke's translation); "Daya-Krama Sangraha," chap. ii. s. iii. paras. 5, 7. See Colebrooke's "Digest," vol. iii. pp. 597, 602, 603.

³ "Daya-Bhaga," chap. iv. s. ii. paras. 13, 17-20. This includes adopted sons, see *ante*, pp. 174, 175.

⁴ "Daya-Krama Sangraha," chap. ii. s. iii. para. 9.

⁵ "Daya-Bhaga," chap. iv. s. ii. para. 34; "Daya-Krama Sangraha," chap. ii. s. vi. para. 2.

⁶ Banerjee's "Law of Marriage" (2nd ed.), p. 410; *Srinath Gango-padhya v. Sarbamangala Debi* (1868), 2 B. L. R. A. C. 144; 10 W. R. C. R. 488. As to the "Mitakshara," see *ante*, p. 433.

⁷ "Daya-Bhaga," chap. iv. s. ii.

paras. 17-21; "Daya-Krama Sangraha," chap. ii. s. iii. para. 10.

⁸ "Daya-Bhaga," chap. iv. s. iii. para. 32; "Daya-Krama Sangraha," chap. ii. s. iii. para. 11.

⁹ "Daya-Krama Sangraha," chap. ii. s. iii. para. 13; "Vyavastha Darpana," 2nd ed., p. 714.

¹⁰ "Daya-Bhaga," chap. iv. s. ii. para. 16; explained in *Prosanno Kumar Bose v. Sarat Shoshi Ghosh* (1908), 36 Calc. 86; 12 C. W. N. 924.

¹¹ This has been held not to include a betrothed daughter, *Srinath Gango-padhya v. Sarbamangala Debi* (1863), 2 B. L. R. A. C. 144; 10 W. R. C. R. 488.

¹² *Prosanno Kumar Bose v. Sarat Shoshi Ghosh* (1908), 36 Calc. 86; 12 C. W. N. 924.

¹³ This is according to Colebrooke's translation. According to Siromani's translation, a son's son comes before a daughter's son; Banerjee's "Law of Marriage," 2nd ed., p. 408.

7. Son of co-wife.
8. Co-wife's son's son.
9. Co-wife's son's son's son.
10. Barren daughter, and sonless widowed daughter.¹

According to Dr. Jogendranath Bhattacharya,² "all the general rules relating to *Yautaka* and *Ayautaka* property apply also to the *Pitridatta*, excepting only so far as they are modified by the special rule that the unmarried daughter alone inherits the *Pitridatta* in the first instance." According to Sir G. D. Banerjee,³ "the order given in the '*Daya-Krama Sangraha*' is the same as that for the *Yautaka*; and it seems to be in accordance with the opinions of Jimutavahana and of Raghunandana."

III. Other *stridhan* property.⁴

1. The son and maiden (unbetrothed) ⁵ daughter.⁶
2. The married daughter having, or who may have, male issue.⁷
3. Son's son.⁸
4. Daughter's son.⁹
5. Son's son's son.
6. The son of a rival wife.¹⁰
7. Her son's son.
8. Her son's son's son.
9. A barren daughter or sonless widowed daughter.¹¹

According to the "*Daya-Bhaga*,"¹² the barren and widowed daughters

¹ Srikrishna in the "*Daya-Krama Sangraha*," chap. ii. s. v. p. 3, places these daughters before sons, but this order is not in accordance with the same author's commentary on the "*Daya-Bhaga*" (end of chap. iv.); see *Prosanno Kumar Bose v. Sarat Shoshi Ghosh* (1908), 36 Calc. 86, at p. 105; 12 C. W. N. 924, at p. 936; *Ram Gopal Bhattacharjee v. Narain Chandra Bandopadhyaya* (1905), 33 Calc. 315, at p. 325; 10 C. W. N. 510, at p. 516.

² "Hindu Law," 2nd ed., pp. 594-596.

³ "Law of Marriage," 2nd ed., 408.

⁴ "*Daya-Bhaga*," chap. iv. s. ii. paras. 1-12; "*Daya-Krama Sangraha*," chap. ii. s. iv. paras. 1-10.

⁵ *Srinath Gangopadhyaya v. Sarbamangala Debi* (1868), 2 B. L. R. A. C. 144; 10 W. R. C. R. 488. See, how-

ever, Colebrooke's "*Digest*," vol. iii. p. 590.

⁶ *Basanta Kumari Debi v. Kamikshya Kumari Debi* (1905), 32 I. A. 181; 33 Calc. 23; 10 C. W. N. 1; 7 Bom. L. R. 904.

⁷ "*Daya-Bhaga*," chap. iv. s. ii. para. 9.

⁸ "*Daya-Bhaga*," chap. iv. s. ii. para. 11.

⁹ *Ibid.*, para. 10.

¹⁰ *Gosasen Chund Kobraj v. Kishenmunnee* (1836), 6 Ben. Sel. R. 77 (new edition, 90). Sastri G. C. Sircar ("*Hindu Law*," 2nd ed., p. 415) puts him after a son's son, and before a daughter's son.

¹¹ "*Vyavastha Darpana*," 2nd ed., p. 733.

¹² Chap. iv. s. ii. para. 12; G. C. Sircar's "*Hindu Law*," 2nd ed., p. 415.

come after the daughter's son. Raghunandana¹ and Srikrishna² place the son's grandson after the daughter's son, and Srikrishna also interposes the son, grandson, and great grandson (in the male line) of a rival wife between the son's grandson and the barren and widowed daughter. Srikrishna's views are said to be usually accepted in this matter.³

Where a woman has left no children, or stepsons or their male issue, the next group of heirs consist of her parents, her brothers, and her husband.

I. Property given to her by her parents during maidenhood, and gifts from her husband's family⁴ and from her own family subsequent to marriage (*anwadaya*),⁵ devolve on—

Succession to childless woman.

Gifts during maidenhood and subsequent to marriage.

1. Whole⁶ brother.

2. Mother.

3. Father.

4. Husband.

Sulka devolves in the same way, whether the woman has left children or not.⁷

II. Other *stridhan* property devolves as follows :—

Other property

(a) If she has been married in the *Brahma* form on—

1. Husband.⁸

2. Brother.

3. Mother.

4. Father.⁹

¹ G. C. Sircar's translation of the "Daya-Tattwa," p. 53.

² Srikrishna's Commentary on the "Daya-Bhaga," chap. iv. s. iii.; "Daya-Krama Sangraha," chap. ii. s. iv. para. 9.

³ Banerjee's "Law of Marriage," 2nd ed., p. 401; S. C. Sircar's "Vyavastha Darpana," 2nd ed., p. 718; W. Macnaghten's "Hindu Law," vol. i. p. 39.

⁴ *Hurymohun Shaha v. Shonaton Shaha* (1876), 1 Calc. 275; "Daya-Bhaga," chap. iv. s. iii. paras. 10, 29.

⁵ *Judoo Nath Sircar v. Bussunt Coomar Roy Chowdry* (1873), 11 B. L. R. 286; 19 W. R. C. R. 264; S. C. (1871), 16 W. R. C. R. 105 (gift by father before marriage); *Gopal Chandra Pal v. Ram Chandra Pramanik* (1901), 28 Calc. 311 (gift by father after marriage); *Ram*

Gopal Bhattacharjee v. Narain Chandra Bandopadhyaya (1905), 33 Calc. 315; 10 C. W. N. 510 (Do.); "Daya-Bhaga," chap. iv. s. iii. paras. 10, 29.

⁶ *Debiprasanna Roy Chowdhry v. Harendra Nath Ghose* (1910), 37 Calc. 863; 15 C. W. N. 383.

⁷ "Daya-Bhaga," chap. iv. s. iii. paras. 27, 28.

⁸ *Bistoo Pershad Burral v. Radha Soonder Nath* (1871), 16 W. R. C. R. 115; S. C. *ibid.* 304; "Daya-Bhaga," chap. iv. s. iii. paras. 2, 4.

⁹ "Daya-Krama Sangraha," chap. ii. s. iii. paras. 16, 17; Srikrishna's Commentary on the "Daya-Bhaga"; Banerjee's "Law of Marriage," p. 114; Macnaghten's "Hindu Law," vol. i. pp. 39, 50; "Vyavastha Darpana," 2nd ed., pp. 719, 720. The "Daya-Tattwa" places the mother before the brother (chap. x. para. 26).

(b) Where the marriage is in the *Asura*, or apparently in a local or special form, the order is—

1. Mother.
2. Father.
3. Brother.
4. Husband.¹

Subsequent
succession to
all property

After the above heirs, according to the text-books, *stridhan* property of all kinds, and whatever be the form of marriage,² then devolves, according to the interpretation of Brihaspati's text, accepted by the "Daya-Bhaga,"³ on the sister's son,⁴ husband's sister's son, husband's brother's son, brother's son, son-in-law, and husband's younger brother in the following order⁵ :—

1. Husband's younger brother.⁶
2. Son of husband's elder or younger brother.
3. Sister's son.
4. Husband's sister's son.
5. Brother's son.⁶
6. Daughter's husband.

It has been held that the son of a co-wife is to be preferred to the daughter's son of the paternal grandfather.⁷

The "Daya-Bhaga"⁸ distinctly repudiates the preference of any other persons, and after the above-named the Bengal school places the following :—

¹ "Daya-Krama Sangraha," chap. ii. s. iii. paras. 19-22; Srikrishna's Commentary on the "Daya-Bhaga," chap. iv.

² "Vyavastha Darpana," 2nd ed., pp. 719, 720.

³ Chap. iv. s. iii. para. 31. As to the interpretation of that text, see *Kesserbai (Bai) v. Hunsraj Morarji* (1906), 33 I. A. 176, at p. 197; 30 Bom. 431, at pp. 451, 452; 10 C. W. N. 802, at pp. 813, 814; 8 Bom. L. R. 446.

⁴ This includes stepsister's son, *Dasharathi Kundu v. Bypin Behari Kundu* (1904), 32 Calc. 261; 9 C. W. N. 119.

⁵ "Daya-Bhaga," chap. iv. s. iii. paras. 37, 38; "Daya-Tattwa," chap. x. paras. 27-36; "Daya-Krama San-

graha," chap. ii. s. vi. paras. 1-9; Banerjee's "Law of Marriage," 2nd ed., pp. 418-420; *Bachha Jha v. Jugmon Jha* (1885), 12 Calc. 348 at p. 353.

⁶ The husband's younger brother comes before the widow's stepbrother; *Debiprasanna Roy Chowdhry v. Harendra Nath Ghose* (1910), 37 Calc. 863; 15 C. W. N. 383. In *Toolsey Dass Seal v. Luckymoney Dassee* (1900), 4 C. W. N. 743, at p. 747, Sale, J., held "with diffidence" that a brother's son came before the husband's younger brother of the half blood.

⁷ *Gosaven Chund Kobraj v. Kishenmunnee (Mussumaut)* (1836), 6 Ben. Sel. R. 77 (new edition, 90).

⁸ Chap. iv. s. iii. para. 41.

7. Father-in-law.
8. Husband's elder brother.¹
9. Her father-in-law's great grandson in the male line.
10. The paternal grandfather of her husband or his issue.
11. The paternal great grandfather of her husband or his issue.²

12. The *sakulyas* and *samanodakas* of her husband in the same order as in the case of the property of males.³

13. The "Daya-Krama Sangraha" places next the *samana-pravaras*,⁴ which would apparently mean the *samanapravaras* of her husband.⁵

Jagannatha⁶ places the woman's kindred on her father's side as far as the tenth degree, and after them the family of her mother after her husband's *samanodakas*, and makes no mention of the *samanapravaras*.

If the view of Brihaspati's text which has been adopted by the Judicial Committee in a Bombay case⁷ is to be applied to the Bengal school, the succession after the husband, father, mother, and brother will devolve, if the woman has been married in the *Brahma* form, on the heirs of her husband, and if she has been married in the *Asura* (or apparently if in a local or special form) falls upon the heirs of her father.

Failing all the above-named *stridhan* heirs, the Crown takes by escheat.⁸

The texts excepted the right of the Crown in the case of a Brahmani woman,⁹ but this limitation is not now effectual.¹⁰

Illegitimacy is not a bar to the succession of children to their mother's property.¹¹

¹ "Daya-Bhaga," chap. iv. s. iii. para. 39; "Daya-Tattwa," chap. x. para. 38; "Daya-Krama Sangraha," chap. ii. s. vi. para. 10.

² Colebrooke's "Digest," vol. iii. p. 623.

³ "Daya-Krama Sangraha," chap. ii. s. vi. para. 11, as translated in Banerjee's "Law of Marriage," 2nd ed., p. 421, and Sirca's "Vyavastha Darpana," 2nd ed., p. 727.

⁴ *Ibid.* The expression means persons descended from the same patriarch in the male line.

⁵ Banerjee's "Law of Marriage" (2nd ed.), p. 422.

⁶ Colebrooke's "Digest," vol. iii. p. 623. See Banerjee's "Law of Marriage" (2nd ed.), pp. 422, 433.

⁷ *Kesserbai (Bai) v. Hunraj Morarji* (1906), 33 L. A. 176; 30 Bom. 431;

10 C. W. N. 802; 8 Bom. L. R. 446.

⁸ See "Daya-Krama Sangraha," chap. ii. s. vi. para. 13.

⁹ "Daya-Krama Sangraha," chap. ii. s. vi. para. 12; Colebrooke's "Digest," vol. iii. p. 623.

¹⁰ See *Collector of Masulipatam v. Cavalry Vencata Narrainapak* (1860), 8 M. I. A. 500; 2 W. R. P. C. 59; ante, pp. 400, 401.

¹¹ *Mayna Bai v. Uttaram* (1864), 2 Mad. H. C. 196, at p. 201; *Arunagiri Mudali v. Ranganayaki Ammal* (1897), 21 Mad. 40; Ghose's "Hindu Law," 2nd ed., 658; "Narada" (Jolly's translation, p. 96) says: "Let the damsel's son, born through his mother's folly, whose father is unknown, present the funeral cake to the father of his mother, and inherit his property."

This has no application to the illegitimate child of a married woman.¹

As to the rights of children by different fathers, see *Arunagiri Mudali v. Ranganayaki Ammal* (1897), 21 Mad. 40.

Dancing-girls
and prosti-
tutes.

There is a conflict of authority as to the inheritance to the property of a dancing-girl attached to a pagoda, a prostitute or a woman who had become degraded by unchastity. The earlier cases in Madras related to dancing-girls attached to pagodas. The rights of their illegitimate issue to inherit, daughters taking before sons, were upheld by the Courts.²

Strange³ lays down the rule that on failure of issue the property of a dancing-girl will go to the pagoda to which she is attached. In the absence of custom there seems to be no real ground for this rule.⁴

The difficulty arises as to other heirs. On the one hand it has been held that "with prostitutes, the tie of kindred being broken, none of their relations, who remain undegraded in caste, whether offspring or not, inherit from them. Their issue after their degradation succeed."⁵ On the other hand, it has been held that "prostitution does not sever the legal relation, and therefore the degradation of a woman does not in law entail a cessation of the tie of kindred between her and the members of her natural family, or between her and the members of her husband's family,"⁶ and that the ordinary rules of inheritance apply.⁷

¹ *Jagannath Raghunath v. Narayan* (1910), 34 Bom. 553; 12 Bom. L. R. 545.

² *Kamakshi v. Nagarathnam* (1870), 5 Mad. H. C. 161; *Strange's "Manual,"* p. 89, para. 361. See *Narasanna v. Gangu* (1889), 13 Mad. 133; *Arunagiri Mudali v. Ranganayaki Ammal* (1897), 21 Mad. 40.

³ *"Manual,"* p. 89, para. 362.

⁴ See *Banerjee's "Law of Marriage,"* 2nd ed., pp. 397, 394.

⁵ *Strange's "Manual,"* p. 89, para. 363; *In the goods of Kamineymoney Bewah* (1894), 21 Calc. 697; *Tara Munees Dossea v. Motee Buneanee* (1846), 7 Ben. Sel. R. 273 (new edition, 325); *Narasanna v. Gangu*

(1889), 13 Mad. 133, at p. 134; *Sivasangu v. Minal* (1889), 12 Mad. 277; *Mayna Bai v. Uttaram* (1864), 2 Mad. H. C. 196, at p. 203; *Tripura charan Bannerjee v. Harimati Dassi* (1911), 38 Calc. 495; 15 C. W. N. 807.

⁶ *Subbaraya Pillai v. Ramasami Pillai* (1899), 23 Mad. 171, approved of in *Narain Das v. Tirlok Tiwari* (1906), 29 All. 4, which differed from *In the goods of Kamineymoney Bewah* (1894), 21 Calc. 697.

⁷ *Sarna Moyee Bewa v. Secretary of State* (1897), 25 Calc. 254; 2 C. W. N. 97; *Kamakshi v. Nagarathnam* (1870), 5 Mad. H. C. 161; *Cunningham's "Digest,"* p. 112.

In one case the right of the husband,¹ in another that of the stepson,² and in a third the right of a daughter³ was maintained.

There may be a local custom or usage by which only degraded relations succeed.⁴

As to adoptions by dancing-girls and prostitutes, see *ante*, pp. 157, 158.

¹ *Narain Das v. Tirlok Tiwari* 495.
(1906), 29 All. 4.

² *Subbaraya Pillai v. Ramasami Pillai* (1899), 23 Mad. 171.

³ *Tara v. Krishna* (1907), 31 Bom.

⁴ See *Sarna Moyee Bewa v. Secretary of State* (1897), 25 Calc. 254; 2 C. W. N. 97.

CHAPTER XV.

POWERS OF WOMEN OVER PROPERTY INHERITED BY THEM.

Limited
powers of
female heirs

WITH the exceptions hereafter mentioned,¹ a woman who succeeds as heir, whether to a male² or to a female,³ has not complete dominion over the property inherited by her, so as to be able to alienate it otherwise than in case of necessity.⁴ She does not become a fresh stock of descent, and on her death it passes to the then heir of the last full owner, *i.e.* to the person who would have been the heir of the last full owner, if such full owner had died simultaneously with the limited owner.⁵

In the case of *stridhan* property the *stridhan* heir of the woman from whom the deceased female inherited, will inherit, or in other words that what has once descended as *stridhan* does not so descend again.⁶

As to movable property, see *post*, pp. 453, 454.

¹ *Post*, pp. 451, 452

² Cases, *post*, p. 449, notes 1, 2, 4.

³ (Benares school) *Sheo Shankar Lal v. Debi Sahai* (1903), 30 I. A. 202; 25 All. 468; 7 C. W. N. 831, reversing *Debi Sahai v. Sheo Shanker Lal* (1900), 22 All. 353; *Sheo Pertab Bahadur Singh (Lal) v. Allahabad Bank* (1903), 30 I. A. 209; 25 All. 476; 7 C. W. N. 840; 5 Bom. L. R. 833; *Chotay Lall v. Chunno Lall* (1878), 6 I. A. 15; 4 Calc. 744; 3 C. L. R. 465; S. C. in Court below (1874), 14 B. L. R. 235, at p. 237; *Thakoor Deyhee (Mussumat) v. Baluk Ram (Rai)* (1866), 11 M. I. A. 139; 10 W. R. P. C. 3; *Bhugwandeem Doobey v. Myna Bae* (1867), 11 M. I. A. 487; 9 W. R. P. C. 23; (Madras) *Venkatarama Krishna Rau v. Bhujanga Rau* (1895), 19 Mad. 107; *Virasangappa Shetti v. Rudrappa Shetti* (1895), 19 Mad. 110; *Sengamalathammal v. Valaynda Mudali*

(1867), 3 Mad. H. C. 312; *Raju, Gramany v. Ammani Ammal* (1906) 29 Mad. 358. (Bengal school) *Prankissen Laha v. Noyanmoney Dassee (Sreemutty)* (1879), 5 Calc. 222; *Huri Doyal Singh Sarmana v. Grish Chunder Mookerjee* (1890), 17 Calc. 911; *Bhoobun Mohun Banerjee v. Muddon Mohun Sing* (1877), 1 Shome's L. R. C. R. 3; *Prankishen Sing v. Bhagwutee (Mussummat)* (1793), 1 Ben. Sel. R. 4; "Daya-Krama Sangraha," chap. ii. s. iii. para. 6.

⁴ *Post*, pp. 461 *et seq.*

⁵ *Moniram Kolita v. Kerry Kolytany* (1880), 7 I. A. 115, at p. 154; 5 Calc. 776, at pp. 789, 790; 6 C. L. R. 322, at pp. 332, 333; *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 543; 2 W. R. P. C. 31.

⁶ *Sheo Shankar Lal v. Debi Sahai* (1903), 30 I. A. 202; 25 All. 468;

Thus a widow,¹ a daughter² (except in Bombay³), a mother⁴

7 C. W. N. 831; 5 Bom. L. R. 828; *Sheo Pertab Bahadur Singh (Lal) v. Allahabad Bank* (1903), 30 I. A. 209; 25 All. 276; 7 C. W. N. 840; *Huri Doyal Singh Sarmana v. Grish Chunder Mookerjee* (1890), 17 Calc. 911.

¹ *Keerut Sing v. Koclakul Sing* (1839), 2 M. I. A. 331; 5 W. R. P. C. 131; *Collector of Masulipatam v. Cavalry Vencata Narrainapah* (1861), 8 M. I. A. 529; 2 W. R. P. C. 61; *Thakoor Deyhee (Mussumat) v. Baluk Ram (Rai)* (1866), 11 M. I. A. 139; 10 W. R. P. C. 5; 2 Ind. Jur. N. S. 106; *Bhugvaandeen Doobey v. Myna Baee* (1867), 11 M. I. A. 487; 9 W. R. P. C. 23; *Moniram Kolita v. Kerry Kolitany* (1880), 7 I. A. 115, at p. 154; 5 Calc. 776, at pp. 789, 790; 6 C. L. R. 322, at pp. 332, 333; S. C. in Court below, *Kery Kolitany v. Moneeram Kolita* (1873), 13 B. L. R. 1, at p. 5; 19 W. R. C. R. 367, at p. 368; *Panchowree Mahtoon v. Kaleechurn* (1868), 9 W. R. C. R. 490; *Haridas Dutt v. Ranganmani Dasi* (1861), 2 Taylor and Bell, 279; "Vyavastha Darpana," 2nd ed., p. 124; *Gurunath Nilkanth v. Krishnaji Govind* (1880), 4 Bom. 462; *Jamiyatram v. Janna (Bai)* (1864), 2 Bom. H. C. 10; *Lakshmbai v. Ganpat Moroba* (1867), 4 Bom. H. C. O. C. 150, at p. 163; *Bhaskar Trimbak Acharya v. Mahadev Ramji* (1869), 6 Bom. H. C. O. C. 1; *Karuppa Thevan v. Alayu Pillai* (1881), 4 Mad. 152; "Daya-Bhaga," chap. xi. s. i. para. 61; "Vyavahara Mayukha," chap. iv. s. viii. para. 4; "Viramitrodaya," chap. iii. part i. s. 3; "Smriti Chandrika," chap. xi. s. i. para. 28; "Vivada Chintamani" (P. C. Tagore's translation), p. 261; (widow of *sepinda* in Bombay) *Bharmangavda v. Rudrappavda* (1879), 4 Bom. 181; *Tuljaram Morarji v. Mathuradas* (1881), 5 Bom. 662; *Madhavram Mugatram v. Dave Trambaklal Bhavannishankar* (1896), 21 Bom. 739. This applies also to the widow of a Nambudhri Brahmin, *Vasudevan v. Secretary of State* (1887), 11 Mad. 157, at p. 165.

² *Chotay Lall v. Chunno Lall* (1878),

H. L.

6 I. A. 15; 4 Calc. 744; 3 C. L. R. 465; *Mutta Vaduganadha Tevar v. Dorasinga Tevar* (1881), 8 I. A. 99; 3 Mad. 290; *Venkayamma Garu (Raja Ohelikani) v. Venkataramanayamma (Raja Ohelikani)* (1902), 29 I. A. 156; 25 Mad. 678; 7 C. W. N. 1; 4 Bom. L. R. 657; *Dowlut Kooer v. Burmadeo Sahoy* (1874), 14 B. L. R. 246, note; 22 W. R. C. R. 54; *Deo Persad v. Lujoo Roy* (1873), 14 B. L. R. 245, note; 20 W. R. C. R. 102; *Gyan Koowur (Mussumaut) v. Dookhurn Singh* (1829), 4 Ben. Sel. R. 330 (new edition, 420); *Sheo Sehai Singh v. Omed Konwur (Mussummat)* (1840), 6 Ben. Sel. R. 301 (new edition, 378); *Gunga Mya v. Kishen Kishore Chowdhry* (1821), 3 Ben. Sel. R. 128 (new edition, 170); *Kattama Nachiar v. Dorasingar Tevar* (1871), Mad. H. C. 310.

³ Post, pp. 451, 452.

⁴ (Bombay cases) *Vrijbhukandas Dwarkadas v. Parvati (Bai)* (1907), 32 Bom. 2; 9 Bom. L. R. 1187; *Madhavram v. Dave Trambaklal* (1896), 21 Bom. 739, at p. 744; *Tuljaram Morarji v. Mathuradas* (1881), 5 Bom. 662, at p. 70; *Bharmangavda v. Rudrappavda* (1879), 4 Bom. 181, at p. 187; *Sakharam Sadashev Adhikari v. Sitabai* (1879), 3 Bom. 353; *Narsappa Lingappa v. Sakha am Krishna* (1869), 6 Bom. H. C. A. C. 215; *Vinayek Anundrao v. Luxumeebaee* (1861), 1 Bom. H. C. 117. (It is submitted that the reasons given in *Gandhi Maganlal Motichand v. Jadab (Bai)* (1897), 24 Bom. 192; 1 Bom. L. R. 574, for holding that a grandmother takes an absolute estate in Bombay might also be applied to a mother.) (Madras cases) *P. Bachiraju v. Venkattappadu* (1865), 2 Mad. H. C. 402; *Kutti Ammal v. Radakristna Aiyar* (1875), 8 Mad. H. C. 68. (Benares school) *Julesur Kooer v. Uggur Roy* (1882), 9 Calc. 725; 12 C. L. R. 460; *Punchanund Ojhab v. Lalshan Misser* (1865), 3 W. R. C. R. 140. (Mithila school) *Ibid.*; "Vivada Chintamani" (P. C. Tagore's translation)

and a grandmother¹ (except in Bombay²) take only a restricted estate.

She has no greater right over the self-acquired property of the last full owner than over the property inherited by him.³

The restriction applies to *inams*, even though they be enfranchised in the widow's name.⁴

Cannot alter
estate.

A restricted female owner cannot alter the nature of the estate held by her. Thus a widow cannot, "by any act or declaration of her own, while retaining possession of her husband's estate, give her possession or estate a character different from that attaching to the possession or estate of a Hindu widow,"⁵ and daughters cannot by any arrangement alter the rights of the reversionary heirs.⁶

Even the whole body of immediate reversioners cannot enlarge the estate of a restricted female heir by a release or otherwise,⁷ but reversioners giving such release for good consideration may be bound by it.⁸

The interest of the widow is not altered by a new settlement being made with her by the Government⁹ unless it is quite clear from the terms of the settlement that it has been so altered.

Restrictions
not dependent
on heirs.

"The restrictions on a Hindu widow's power of alienation are inseparable from her estate, and . . . their existence does not depend on that of heirs capable of taking it on her death."¹⁰

The reason for a woman's interest being limited is that the property should not leave the *gotra* (family) of the person from whom she has inherited it.

p. 263. (Bengal school) *Poorendra Nath Sen v. Hemangini Das* (1908), 36 Calc. 75; 12 C. W. N. 1002; *Brija Dibch (Mussummaut) v. Unpoorna Dibch (Mussummaut)* (1806), 1 Ben. Sel. R. 12 (new edition, 215); *Nufur Mitter v. Ram Koomar Chutloorjya* (1828), 4 Ben. Sel. R. 310 (new edition, 393); *Hemlutia Debea v. Goluck Chunder Gosayn* (1842), 7 Ben. Sel. R. 108 (new edition, 127).

¹ *Phukar Singh v. Ranjit Singh* (1878), 1 All. 661.

² In Bombay a grandmother takes absolutely, *Gandhi Maganlal v. Jadab (Bai)* (1899), 24 Bom. 192; 1 Bom. L. R. 574, *post*, p. 451. See, however, *Madhavram Mugabram v. Dave Trambaklal* (1896), 21 Bom. 739, at p. 744.

³ *Namaswaya Chetti v. Sivagami* (1863), 1 Mad. H. C. 374.

⁴ *Yangala Dikshatulu v. Yangala Gavaramma* (1904), 28 Mad. 13. See *ante*, p. 428.

⁵ *Sham Lall Mitra v. Amarendra Nath Rose* (1895), 23 Calc. 460, at p. 473.

⁶ *Sengamalathammal v. Valaynda Mudali* (1867), 3 Mad. H. C. 312, at

p. 317; *Kailash Chandra Chuckerbutty v. Kashi Chandra Chuckerbutty* (1897), 24 Calc. 339; *Gobind Krishna Narain v. Abdul Qayyum* (1903), 25 All. 546; *Kannu Ammal v. Ammakannu Ammal* (1899), 23 Mad. 504.

⁷ *Narasimham v. Madhavaradugu*, 13 M. L. J. 323; *Hemchunder Sanyal v. Sarnamoyi Debi* (1894), 22 Calc. 354; *Dhoorjeti Subbayya v. Dhoorjeti Venkayya* (1906), 30 Mad. 201; *Hargawan Magan v. Baijnath Das* (1909), 32 All. 88; *contrá Kalichand Dutt v. Moore* (1837), 1 Fulton, 76; "Vyavastha Darpana," 2nd ed., p. 107. See *Olati Pulliah Chetti v. Varadarajulu Chetti* (1908), 31 Mad. 474; *post*, pp. 471, 472.

⁸ *Kali Kishore Pal v. Abdul Karim* (1897), 2 C. W. N. 132. See *Ganpatrao Moroj v. Vamanrao Shamrao* (1908), 10 Bom. L. R. 210.

⁹ See *Kashi Prasad v. Inda Kunwar* (1908), 30 All. 490.

¹⁰ *Collector of Masulipatam v. Cavalry Vencata Narrainapah* (1861), 8 M. L. A. 529, at p. 553; 2 W. R. P. C. 61, at p. 64.

In the Bombay Presidency, whether in places where the "Mitakshara" or in places where the "Mayukha" is paramount, property inherited by a woman from a male, or from a female, otherwise than as widow, mother, daughter-in-law, or widow of a *gotraja sapinda*, is, except so far as it may be subject to her husband's control during his lifetime,¹ her absolute and several property. She can deal with the property *inter vivos* or by will, and on her death it descends to the heirs of her *stridhan* property.²

Where more than one of the same class take, they each take a several interest without rights of survivorship.³

Thus rule has been applied to a woman inheriting as daughter,⁴ sister,⁵ niece,⁶ grandmother,⁷ or grandniece.⁸

It was held by a Full Bench of the Bombay High Court in the case of *Gandhi Maganlal Motichand v. Jadab (Bar)*⁹ that a paternal grandmother in Gujerat, inheriting movable and immovable property from her maiden granddaughter, takes an absolute interest in such property,¹⁰ and that on her death the property goes to her heir, and not to the heir of the granddaughter. Mr. Mayne considers¹¹ that this decision has been impliedly overruled by the decisions of the Judicial Committee in *Sheo Shankar Lal v. Debi Sahai*,¹² and *Sheo Pertab Bahadur Singh (Lal) v. Allahabad*

¹ *Ante*, p. 428; *Bhau v. Raghunath Krishna Gurav* (1905), 30 Bom. 229; 7 Bom. L. R. 936.

² *Ante*, chap. xiv.

³ *Vithappa v. Santri* (1910), 34 Bom. 510; 12 Bom. L. R. 487; *Rukhmani (Bar) v. Keshavlal* (1907), 9 Bom. L. R. 1293.

⁴ *Gulappa Domingappa Kusugal v. Tayawa* (1907), 31 Bom. 453; 9 Bom. L. R. 834; *Rindabai v. Anacharya* (1890), 15 Bom. 206, at p. 208; *Jankibai v. Sundra* (1890), 14 Bom. 612; *Bhagirthibai v. Kahnurjirav* (1886), 11 Bom. 285; *Haribhat v. Damodharbhat* (1878), 3 Bom. 171; *Bulakhidas v. Keshavlal* (1881), 6 Bom. 85; *Babaji v. Bulaji Ganesh* (1881), 5 Bom. 600; *Bhau v. Raghunath Krishna Gurav* (1905), 30 Bom. 229, at pp. 236, 237; *Navalram Atmaram v. Nandkishor Shivnarayan* (1864), 1 Bom. H. C. 209; *Pranjeevandas Toolseydas v. Dewcooverbae* (1859); *Ibid.*, 130; *Rukhmani (Bar) v. Keshavlal* (1907), 9 Bom. L. R. 1293; *Vithappa v. Savitri* (1910), 34 Bom. 510; 12 Bom. L. R. 487.

⁵ *Rindabai v. Anacharya* (1890), 15 Bom. 206; *Bharmangavda v. Rudragavda* (1879), 4 Bom. 181, at p. 187; *Bhaskar Trimbak Acharya v. Mahadev Ramji* (1869), 6 Bom. H. C. O. C. 1; *Vinayek Anundrao v. Luxumeebae* (1861), 1 Bom. H. C. 117; S. C. on appeal (1864), 9 M. I. A. 520; 3 W. R. P. C. 41.

⁶ *Madhavram v. Dave Trambaklal* (1896), 21 Bom. 739, at p. 744.

⁷ *Gandhi Maganlal Motichand v. Jadab (Bar)* (1899), 24 Bom. 192; 1 Bom. L. R. 574.

⁸ *Tuljaram Morarji Mathuradas* (1881), 5 Bom. 662; *Madhavram v. Dave Trambaklal* (1896), 21 Bom. 739, at p. 744.

⁹ (1899), 24 Bom. 192; 1 Bom. L. R. 574.

¹⁰ On the ground that a grandmother takes in her own right, and not as widow of the grandfather.

¹¹ "Hindu Law," 7th ed., pp. 826, 827.

¹² (1903), 30 I. A. 202; 25 All. 468; 7 C. W. N. 831; 5 Bom. L. R. 828.

Bank.¹ It is submitted, however, that this does not necessarily follow. The Bombay decision was founded on the peculiar law of that Presidency. Under that law a grandmother, as in other places governed by the Mitakshara system, succeeds *quâ* grandmother, and not *quâ* widow of the grandfather. She has not, therefore, the limited estate which the Bombay system of law gives to the widows of *gotraja sapindas*,² but under that law she is treated as if she were herself a *gotraja sapinda*, and therefore, although a woman, she is, by analogy to the cases of sisters and nieces, under that law entitled to an absolute estate. Similarly the Bombay rule as to the absolute character of the estate of a daughter has not been affected by the above decisions of the Judicial Committee.³ The same reasoning would, it is submitted, apply to the case of a mother.

It has been laid down that females who have not become members of the family of the late owner by marriage take absolutely,⁴ but there is authority that the question is one of *sapinda relationship*, not of marriage.⁵

In the Bombay Presidency female heirs as a general rule take absolutely. The cases of dependent widows, mothers, collateral *sapindas*, and daughters-in-law are an exception. "The principle of dependence, which perhaps governs the extent of power, may regulate the exceptions where widowed females inherit from males, but in all other cases the rule of absolute dominion must be allowed to prevail."⁶

Where a woman inherits as a widow, or as a mother, or as the wife of a *gotraja sapinda*, she takes only a limited estate,⁷ as in the case of the inheritance of women in other parts of India.

Maiden
daughter.

In the case of a deceased maiden daughter property inherited by her from her mother is said to pass (at any rate in Madras) by a special rule under which she is as much an absolute owner as her mother,⁸ but there is authority to the contrary.⁹

The text of the "Mitakshara,"¹⁰ upon which this rule is said to be based, does not seem to give her greater rights than any other female heir to *stridhan* property.

¹ (1903), 30 I. A. 209; 25 All. 476; 7 C. W. N. 840; 5 Bom. L. R. 833.

² *Ante*, p. 451.

³ See *Bhau v. Raghunath Krishna Gurav* (1905), 30 Bom. 229, at pp. 236, 237; 7 Bom. L. R. 936.

⁴ *Ibid.*, at p. 237, approved of in *Vrijbhukandas v. Parvati (Bai)* (1907), 32 Bom. 26, at p. 29; 9 Bom. L. R. 1187; *Tuljaram Morarji v. Mathuradas* (1881), 5 Bom. 662, at p. 664; *Rindabai v. Anacharya* (1890), 15 Bom. 206; *Madhavram v. Dave Trambaklal* (1896), 21 Bom. 739.

⁵ *Gandhi Maganlal v. Jadab (Bai)* (1899), 24 Bom. 192, at p. 213.

⁶ *Gandhi Maganlal v. Jadab (Bai)* (1899), 24 Bom. 192, at p. 214.

⁷ See *Gadadhar Bhat v. Chandrabhagabai* (1892), 17 Bom. 690; *Tuljaram Morarji v. Mathuradas* (1881), 5 Bom. 662; *ante*, p. 449, note 1.

⁸ See *Narasayya v. Venkayya*, 2 Mad. L. J. 149, explained in *Venkataramakrishna Rau v. Bhujanga Rau* (1895), 19 Mad. 107, at p. 109; *Gandhi Maganlal Motichand v. Jadab (Bai)* (1899), 24 Bom. 192.

⁹ *Janakisetty Sooryudu v. Miryala Hanumayya* (1909), 32 Mad. 521; see *Virasangappa Shetti v. Rudrappa Shetti* (1895), 19 Mad. 110.

¹⁰ Chap. ii. s. xi. para. 30.

"A sonless widow of a Saraogee-Agarwala takes by the custom of Jains. the sect a very much larger dominion over the estate of her husband than is conceded by Hindu law to the widows of orthodox Hindus; that is, she takes an absolute interest, at least in the self-acquired property of her husband. . . ."¹

In the case of ancestral property she takes only the interest which is taken by an orthodox Hindu widow.²

A widow or other limited heir has no greater power over the movable property inherited by her than she has over the immovable property according to the schools of Bengal³ and Benares.⁴ The Madras High Court has taken the same view as to the law prevalent in Southern India.⁵

The law in Bombay on this subject is not so settled.

It is clear that in those districts of the Bombay Presidency where the "Mitakshara" is supreme,⁶ she has no greater power than in Bengal or Benares.⁷ It is also clear that even in territories governed by the "Mayukha" a widow has no testamentary power of disposition over movables which have been inherited by her from her husband,⁸ and that on her death they do not pass to her heirs, and are not available in their hands for the payment of her debts.⁹ She may exercise a power given to her by the will of her husband.¹⁰ "Even in the 'Mayukha' there is not a text which distinctly and definitely supports the widow's absolute dominion and power

¹ *Sheo Singh Rai v. Dakho* (Musumat) (1874), 6 N. W. P. 382, at p. 411, approved on appeal (1878), 5 I. A. 87, at p. 110; 1 All. 688, at p. 704; *Shimbhu Nath v. Gayan Chand* (1894), 16 All. 379; *Harnabh Pershad v. Mandil Dass* (1899), 27 Cal. 379.

² *Shimbhu Nath v. Gayan Chand* (1894), 16 All. 379.

³ *Durga Nath Pramanik v. Chinmoni Dasi* (1903), 31 Cal. 214 8 C. W. N. 11; *Kashinath Basak v. Harasundari Dasi* (1826), "Vyavastha Darpana," 2nd ed., 97; Clark's "Rules and Orders," p. 91; S. C. in Court below, *Cossinaut Byasack v. Hurroosondry Dossee* (1819), 2 Morley's "Digest," 198; *Thakoor Deyhee* (Musumat) v. *Baluk Ram (Rai)* (1866), 11 M. I. A. 139, at p. 175; 10 W. R. P. C. 3, at p. 9.

⁴ *Bhugwandeend Doobey v. Myna Bae* (1867), 11 M. I. A. 487; 9 W. R. P. C. 23.

⁵ *Narasimha v. Venkatadhri* (1885), 8 Mad. 290; *Buchi Ramayya v. Jagapathi* (1884), 8 Mad. 304. There were decisions in the Madras Sudder Court to a contrary effect, see Norton's L. C. pp. 648, 652.

⁶ *Ante*, p. 16.

⁷ *Pandharinath Vishvanath v. Govind Shriram* (1907), 32 Bom. 59; 9 Bom. L. R. 305. See *Gadadhar Bhat v. Chandrabhagabai* (1892), 17 Bom. 690.

⁸ *Chamanlal Maganlal Sha v. Doshi Ganesh Motichand* (1904), 28 Bom. 453; 6 Bom. L. R. 460, following *Gadadhar Bhat v. Chandrabhagabai* (1892), 17 Bom. 690. See *Harilal Harjivandas v. Pranvalavdas Parbhudas* (1888), 16 Bom. 229; *Motilal Lalubhai v. Ratilal Mahiputram* (1895), 21 Bom. 170.

⁹ *Jamna (Bai) v. Bhaishankar* (1891), 16 Bom. 233.

¹⁰ *Motilal Lalubhai v. Ratilal Mahiputram* (1895), 21 Bom. 170.

over movables inherited from her husband." ¹ There is, however, considerable judicial authority that in cases governed by the "Mayukha" a widow or other female owner can dispose of the movable property during her lifetime.²

"It is observed by Mr. Mayne, in s. 229,³ that the power must generally be taken to be limited to such necessary or suitable purposes as would come within the ordinary power of the head of a household. We should prefer to say that the nature of movable property being such that in many cases conversion is essential to its enjoyment, the widow is not precluded from converting it, but must preserve the capital, unless the expenditure of it is necessitated by the insufficiency of the income to provide for her maintenance, subject, nevertheless, to a power to dispose of a moderate portion for works of piety."⁴

Under the Mithila law a childless Hindu widow, although she cannot alienate the immovable property, has an absolute right over the movable property inherited from her husband, and can alienate it in any manner she pleases.⁵

Will.

Even where a woman has power to dispose of property inherited by her by an act *inter vivos*, she cannot dispose of it by will,⁶ and if it has not been disposed of, it passes to the next heir.⁷

Share on partition.

As to the interest taken by a mother or grandmother in property allotted to her on partition, see *ante*, pp. 320, 321.

¹ *Pandharinath v. Govind* (1907), 32 Bom. 59, at p. 73; 9 Bom. L. R. 1305.

² *Bechur Bhugwan v. Lukmee (Bae)* (1863), 1 Bom. H. C. 56; *Vinayek Anunirao v. Luxumeebae* (1861), 1 Bom. H. C. 117; *Pranjeewandas v. Dwcooverbae* (1859), 1 Bom. H. C. 130; *Laksmibai v. Ganpat Moroba* (1867), 4 Bom. H. C. O. C. 150, at p. 162. In *Bhagirthibai v. Kahnajirav* (1886), 11 Bom. 285, at p. 297, West, J., says that the widow's absolute right to movable property inherited from her husband has never been seriously questioned in Bombay. See also *Balvantrav v. Purshotam* (1872), 9 Bom. H. C. 99, at p. 111; *Tuljaram Morarji v. Mathuradas* (1881), 5 Bom. 662, at p. 670; *Damodar Madhooji v. Purmanandas* (1883), 7 Bom. 155, at p. 163.

³ Mayne's "Hindu Law," 7th ed., pp. 322, 870.

⁴ *Narasimha v. Venkatadri* (1885),

8 Mad. 290, at p. 293, referred to in *Gaddadhar Bhat v. Chandrabhagabai* (1892), 17 Bom. 690, at pp. 703, 704.

⁵ *Birajun Koer v. Luchmi Narain Mahata* (1884), 10 Calc. 392; *Doorga Dayee v. Poorun Dayee* (1886), 5 W. R. C. R. 141; *Sreenarain Rai v. Bhya Jha* (1812), 2 Ben. Sel. R. 23, at p. 27 (new edition, 20, at p. 36); "Vivada Chintamani" (Tagore's translation), pp. 261, 262.

⁶ For instance she cannot, by will create a charge on her husband's immovable property for the purpose of paying debts incurred for necessary purposes: *Vishvanath v. Narayan* (1903), 5 Bom. L. R. 314.

⁷ *Thakoor Deyhee (Mussumat) v. Baluk Ram (Rai)* (1886), 11 M. I. A. 139; 10 W. R. P. C. 3; *Gaddadhar Bhat v. Chandrabhagabai* (1892), 17 Bom. 690; *Harilal Harjivandas v. Pranvalaldas Parbhudas* (1888), 16 Bom. 229. See "Vivada Chintamani," pp. 261, 262.

The whole estate is vested in the widow or other restricted female owner.¹ She completely represents it.² She is entitled to the absolute possession of it,³ and the full enjoyment of its produce, which she can spend without being accountable to any one.⁴ She cannot waste the corpus of the property, nor can she alienate it except for purposes of necessity or with the assent of the next reversioners, i.e. of the persons who are at the time of the alienation heirs of the last full owner.⁵ All acts for the benefit of the estate or for necessity bind the estate.⁶

Nature of estate of widow or other limited female heir

During her lifetime no one else has any interest in the estate.⁷

"It is clear that under the Hindu law the widow, though she takes as heir, takes a special and qualified estate. Compared with any estate that passes under the English law by inheritance it is an anomalous estate. It is a qualified proprietorship, and it is only by the principles of Hindu law that the extent and nature of the estate can be determined."⁸

"A widow who succeeds to the estate of her husband in default of male issue, whether she succeeds by inheritance or survivorship . . . does not take a mere life estate in the property. The whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest. Her estate is an anomalous one, and has been compared to that of a tenant in tail. It would perhaps be more correct to say that she holds an estate of inheritance to her and the heirs of her husband."⁹

But the estate of a Hindu widow is very different from a mere life

¹ *Anandibai v. Rajaram Chintaman Pethe* (1897), 22 Bom. 984, *Kamavadhani Venkata Subbaya v. Joysa Narasingappa* (1866), 3 Mad. H. C. 116.

² *Kery Kohltany v. Moneeram Kohla* (1873), 13 B. L. R. 1, at p. 53; 19 W. R. C. R. 367, at p. 396; *Bhala Nahana v. Parbhu Hari* (1877), 2 Bom. 67, at pp. 73, 74, and cases therein cited; *Karimuddin (Munshi) v. Gobind Krishna Narain (Kunwar)* (1909), 36 I. A. 138; 31 All. 497; 13 C. W. N. 1117; 11 Bom. L. R. 911.

³ *Kashinath Basak v. Harasundari Das* (1826), Clarke's "Rules and Orders;" Montrieux's "Cases of Hindu Law," p. 495; "Vyavastha Darpana," 2nd ed., p. 97; *Biswanath Chandra v. Khantomani Das* (1871), 6 B. L. R. 747.

* *Kamavadhani Venkata Subbaya*

v. Joysa Narasingappa (1866), 3 Mad. H. C. 116; *In the goods of Harendranarayan* (1853), 4 B. L. R. O. C. 41, note.

⁵ *Post*, pp. 468-471.

⁶ *Sadasi Koer v. Ramgobind Singh* (1911), 15 C. W. N. 857

⁷ *Post*, p. 479.

⁸ *Collector of Masulipatam v. Cavalry Vencata Narrainappa* (1861), 8 M. I. A. 529, at p. 550, 2 W. R. P. C. 61, at p. 64.

⁹ *Moniram Kohla v. Kerry Kohltany* (1880), 7 I. A. 115, at p. 154; 5 Calc. 776, at pp. 789, 790; 6 C. L. R. 322, at pp. 332, 333. See *Bhala Nahana v. Parbhu Hari* (1877), 2 Bom. 67, at pp. 73, 74, and cases therein cited; *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 543; 2 W. R. P. C. 31.

estate. The case of *Kashinath Basak v. Harasundari Das*,¹ . . . establishes that the estate of the widow is something higher than a life estate, that it entitles her to the possession of the property without restriction; and that she has a qualified power of disposition in it, the limits of which it is difficult, if not impossible, to define further than by saying that the propriety of any particular exercise of that power must depend on the circumstances in which it is made, and must be consistent with the general principles of Hindu law regarding such dispositions. The cases of *Oogul-monee Dossee v. Saqormonee Dossee* and *Hurry Doss Datt v. Runjunmonee Dossee*,² which have established in this Court the right of the reversionary heirs, though their interest is only contingent, to maintain a suit to restrain waste by the widow³ (particularly the latter case in which the late Chief Justice entered at large into the nature of the widow's estate) are quite consistent with what I have above stated. Sir Lawrence Peel there says: "The estate, though sometimes so expressed to be, is not an estate for life; when a widow alienates she does so by virtue of her interest, not of a power, and she passes the absolute interest, which she could not do if she had but a life estate."⁴

Different from
manager.

Her position is different from that of a manager. "A manager stands in a different position. He can act only with the assent, express or implied, of the body of coparceners.⁵ In the widow's case the coparceners are reduced to herself, and the estate centres in her."⁶

As a reversioner does not derive title through the restricted heir, an acknowledgment of a right or liability by her does not under the existing limitation law⁷ bind the reversioner.⁸

Interference
with her acts.

The Court will not interfere with the action of the limited female owner, unless it is shown that there is danger from the mode in which she is dealing with the property, or that her acts have endangered the estate or the reversion.⁹

"A bill filed by the presumptive heir in succession against the immediate owner who has succeeded by inheritance, must show a case approaching to spoliation, must enable the Court to see that there is probable ground for apprehending that, unless an injunction be granted to restrain some threatened or impending act, ultimate loss to the heirs who may come into possession by succession will ensue. It is not enough to make out that some gift has been made or some disposition taken place, or that

¹ (1826) Clarke 91; Montriou's "Cases of Hindu Law," p. 495; "Vyavastha Darpana," 2nd ed., p. 97.

² (1851) Taylor and Bell, II. p. 279; "Vyavastha Darpana," 2nd ed., p. 125; Sev. 657.

³ See *post*, pp. 481, 482.

⁴ *Jadomoney Dabee v. Sarada Pro-sanno Mookerjee* (1856), 1 Boul. 120, at p. 129.

⁵ See *ante*, p. 258.

⁶ *Chimnaji Govind Godbole v. Din-kar Dhonev Godbole* (1886), 11 Bom. 320, at p. 324.

⁷ Act IX. of 1908, s. 19.

⁸ *Shub Shankar Lal v. Soni Ram* (1909), 32 All. 33.

⁹ *Hurrydoss Dutt v. Uppoonnah Dossee* (1856), 6 M. I. A. 433. See *post*, pp. 481, 482.

such is about to be made or to take place, which the law would not support. The estate of the female owner, her own personal estate, might be large, and adequate to repay ten times over the alleged spoliation, and there might not be the remotest prospect of loss, and the thing alienated might have no specific peculiar value."¹

The mere fact of the widow keeping in hand for about three months part of the corpus for the alleged purpose of an eligible investment does not amount to waste, nor is it in derogation of the rights of those entitled to reversion.²

If there be an apprehension of waste of movable property allotted to a widow on partition, provision may be made in the final decree to safeguard the interests of the reversioners.³ In one case the Bombay High Court⁴ required a sum of money to which a widow was entitled as such to be secured for the benefit of the reversion, but in another case the Calcutta High Court held that she cannot be compelled, without proof of waste, to give security for the value received by her of lands belonging to her husband's estate taken by a railway company.⁵ The Court may now direct the investment of the proceeds of land belonging to a restricted heir which has been acquired for public purposes.⁶

"The principle that a Hindu widow is entitled to the uncontrolled possession of property, movable and immovable, of her deceased husband, is clearly laid down by Lord Gifford in *Cossinath Bysack v. Hurroosondry Dossee*.⁷ . . . The general apprehension of danger that, if personal property be entrusted to a Hindu widow, there is every probability of its being parted with, and if so, it may not be recovered, is an element which cannot be allowed to exist or considered consistently with the views of the Privy Council in the case last cited. The danger must be established not as a matter of probable speculation, but as one of reasonable certainty to the satisfaction of the Court."⁸

There is authority that where there is more than one widow the elder widow has the preferable claim to the management of the property.⁹

Two or more widows may by an agreement *inter se*, not prejudicial to the rights of the next heir in succession, provide for the distributive enjoyment of the benefit of the joint property by an apportionment thereof.¹⁰

Where more than one widow.

¹ *Haridas Dutt v. Ranganmani Dasi* (1851), 2 Taylor and Bell, 279; "Vyavastha Darpana," 2nd ed., 127; *See* 657. *See Hurrydoss Dutt v. Upoor-nah Dossee* (1856), 6 M. I. A. 433.

² *Hurrydoss Dutt v. Upoor-nah Dossee* (*Sreemutty*) (1856), 6 M. I. A. 433.

³ *Durga Nath Pramanik v. Chintamon Dassi* (1903), 31 Calc. 214; 8 C. W. N. 11.

⁴ *Gambhirmal v. Hamirmal* (1896), 21 Bom. 747.

⁵ *Bindoo Bassinee Dossee v. Bolie Chand Sett* (1864), 1 W. R. C. R. 125.

⁶ Land Acquisition Act (I. of 1894),

s. 32: *see Mṛinalini Dasi v. Abinash Chandra Dutt* (1910), 14 C. W. N. 1024.

⁷ (1826) Clarke's "Rules and Orders," App. 91; Montrieux's "Cases of Hindu Law," p. 495; "Vyavastha Darpana," 2nd ed., p. 97.

⁸ Per Paul, J., in *Biswanath Chandra v. Khantomani Dasi* (1871), 6 B. L. R. 747, at p. 751.

⁹ *Jijoyiamba Baiy Saiba* (H. H. M.) v. *Kamakshi Baiy Saiba* (H. H. M.) (1868), 3 Mad. H. C. 424.

¹⁰ *Ibid.* at p. 453; *Mahadevappa v. Basagawda* (1905), 29 Bom. 346; 7 Bom. L. R. 238.

Additions to estate.

Where additions are made to an estate by a restricted female owner with the intention that they should form part of the estate, such additions pass with the estate and not to the heirs of such owner, though they have been made with funds over which she has absolute powers of disposal.

Such intention will be presumed in the case of the erection of buildings on land belonging to the estate.¹

Accumulations.

A widow or other restricted female owner may use for her own purposes and may alienate the income of the estate which has accumulated in her hands, or which has accumulated in the hands of some other person from whom she recovers it.²

Should there be no proof of any distinct intention to appropriate to herself investments made from income or accumulations of income they will be considered accretions to the estate.³

When a widow purchases property with money borrowed on the credit of her husband's estate, his heir is entitled to it, subject to the burden of paying the debt.⁴

If she invest the income with the intention that it should be an accretion to her husband's estate, she cannot thereafter deal with it, except under circumstances which would justify her dealing with the original estate.⁵

Should she invest the income in such a way as to indicate her intention that it was not to form part of her husband's estate, but to remain at her disposal, whether such investment be of a temporary or permanent nature, she can deal

¹ *Venkata Natasimha Appa Rao Bahadur (Rajah) v. Venkata Purushothama Jagannadha Gopala Row Bahadur (Rajah Surenani)* (1908), 31 Mad. 321; *Fakira Dobey v. Gopi Lal* (1880), 6 C. L. R. 66.

² *Soorjeemoney Dossee (Sreemutty) v. Denobundoo Mullick* (1862), 9 M. I. A. 123; *Pannalal Seal v. Bama-sundari Das* (1871), 6 B. L. R. 732; *Sowdaminee Dossee v. Administrator General of Bengal* (1892), 20 I. A. 12; 20 Calc. 433; *Ieri Dut Koer v. Hansabutti Koeravv (Mussumut)* (1883), 10 I. A. 150, at p. 155; 10 Calc. 324, at p. 334; 13 C. L. R. 418, at p. 424; *Saminatha Pillai v. Manikkasami Pillai* (1899), 22 Mad. 356.

See, however, *Grose v. Amirtamayi Das* (1869), 4 B. L. R. O. C. 1, at pp. 40, 42; 12 W. R. O. C. J. 13, at pp. 28, 29.

³ *Sheo Lochun Singh (Babu) v. Saheb Singh (Babu)* (1887), 14 I. A. 63; 14 Calc. 387; *Gonda Koer v. Oodey Singh (Koer)* (1874), 14 B. L. R. 159. See, however, *Akkanna v. Venkayya* (1901), 25 Mad. 351, at pp. 359, 360.

⁴ *Oodey Singh (Koer) v. Phool Chund* (1873), 5 N. W. P. 197.

⁵ *Ieri Dut Koer v. Hansabutti Koeravv (Mussumut)* (1883), 10 I. A. 150, at p. 161; 10 Calc. 324, at p. 337; 13 C. L. R. 418, at p. 427.

with it, at any rate, during her lifetime.¹ Should she not dispose of the property during her lifetime it does not pass to her heir, but is treated as a portion of her husband's estate.²

It is not "possible to lay down any sharp definition of the line which separates accretions to the husband's estate from income held in suspense in the hands of the widow, as to which she has not determined whether or no she will spend it." ³

Income not appropriated by the restricted owner at the time of her death, passes to the reversioner and not to her *stridhan* heir.⁴

Where under a deed or will a Hindu widow is given complete power to appropriate the profits, the profits unappropriated at the time of her death will apparently pass to her heir.

Where the widow is not owner of her husband's estate but invests money received therefrom on account of her maintenance, it is her *stridhan*,⁵ and passes as such to her heirs.⁶ Savings from maintenance money.

There is no presumption of law that property acquired by a Hindu widow after her husband's death forms part of his estate.⁷ Presumption.

¹ See *Sowdaminee Dossee v. Administrator General of Bengal* (1892), 20 I. A. 12; 20 Calc. 433; *Akkanna v. Venkayy* (1901), 25 Mad. 351; *Puddo Monee Dossee (Sreemutty) v. Dwarka Nath Biswas* (1876), 25 W. R. 335, at p. 340; *Nihal Khan v. Hur Churn Lall* (1866), 1 Agra, 219.

² *Anund Chundra Mundul v. Nil-money Jourdar* (1883), 9 Calc. 758; *Ishri Dutt Koer v. Hansbutti Koerain (Mussumut)* (1883), 10 I. A. 150, at p. 158; 10 Calc. 324, at p. 334; 13 C. L. R. 418, at p. 429; S. C. in Court below, *Hansbutti Kerain v. Ishri Dutt Koer* (1879), 5 Calc. 512, at p. 521; 4 C. L. R. 511, at pp. 519, 520. *Sridhar Chattopadhyaya v. Kalipada Chuckerbutty* (1911), 16 C. W. N. 106, where it was held that an agent appointed by a Hindu widow is bound to account to the reversioner for profits realized by him in the widow's lifetime and not paid to her. See *Bhagbutti Dace (Mussumat) v. Bholanath Thakoor (Chowdhry)* (1875), 2 I. A. 256, at pp. 260, 261; 24 W. R.

C. R. 168, at pp. 169, 170; S. C. in Court below, *Bholanath Thakoor (Chowdhry) v. Bhagabutti Dey (Musst)* (1871), 7 B. L. R. 93, at p. 100; 15 W. R. C. R. 63, at p. 64, relying on *Chundrabulee Debia v. Brody* (1868), 9 W. R. C. R. 584, and *Nihal Khan v. Hurchun Lall* (1866), 1 Agra, 219; *Oodey Singh (Kooer) v. Phool Chunl* (1873), 5 N. W. P. 197, at p. 201.

³ *Ishri Dutt Koer v. Hansbutti Koerain (Mussumut)* (1883), 10 I. A. 150, at pp. 160, 161; 10 Calc. 324, at p. 337; 13 C. L. R. 418, at p. 427.

⁴ *Rivett Carnac v. Jivabai* (1886), 10 Bom. 478. See *Hansbutti Kerain v. Ishri Dutt Koer* (1879), 5 Calc. 512, at p. 525; 4 C. L. R. 511 at p. 523.

⁵ *Ante*, pp. 422, 423.

⁶ *Subramanian Chetti v. Arunachalam Chetti* (1904), 28 Mad. 1; *ante*, chap. xiv.

⁷ *Ran Bijai Bahadur Singh (Dewan) v. Indar Pal Singh* (1899), 26 I. A. 226; 26 Calc. 871; 4 C. W. N.

Leases.

A restricted female owner can grant leases or do other acts in the ordinary course of management.¹

Leases in excess of such power, such as permanent leases,² or leases for a long term of years,³ are voidable by the reversioners at her death, unless they are justified by such circumstances as justify an alienation,⁴ or perhaps in exceptional cases where they are justified by rules of prudent management,⁵ or are for the benefit of the estate.⁶

The lease would at least endure for the life of the restricted owner.⁷

A suit to set aside such lease must be brought within twelve years from the restricted owner's death.⁸

Quarry on mine.

A Hindu widow can work a quarry and apply the proceeds for her own purpose, at any rate, provided that she does not exhaust the land.⁹

Alienation by restricted owner for her life.

A widow¹⁰ or other restricted female owner¹¹ can alienate the property or her interest in it, if she be a joint owner,¹² for her lifetime. When she purports to alienate the whole estate in the property, but on the ground of want of necessity or otherwise her act is not binding on the reversioners, the

1; 2 Bom. L. R. 1; *Dakhina Kali Debi v. Jagadishwar Bhattacharjee* (1897), 2 C. W. N. 197. See *Bissessur Chuckerbutty v. Ramjoy Mojomdar* (1865), 2 W. R. C. R. 326; 8 Sev. 708; *Gobind Chunder Mojomdar v. Dulmeer Khan* (1874), 23 W. R. C. R. 125.

¹ *Ante*, p. 455.

² *Modhu Sudan Singh (Raja) v. Rooke* (1897), 24 I. A. 164; 25 Calc. 1; 1 C. W. N. 433.

³ *Sadai Naik v. Serai Naik* (1901), 28 Calc. 532; 5 C. W. N. 279; *Bijoy Gopal Mukerji v. Nal Ratan Mukerji* (1903), 30 Calc. 990; 7 C. W. N. 864; S. C. on appeal, *Bijoy Gopal Mukerji v. Krishna Mahishi Debi (Srimati)* (1907), 34 I. A. 87; 34 Calc. 329; 11 C. W. N. 424; 9 Bom. L. R. 602. Cf. *Banee Madhub Ghose v. Thakoor Does Mundul* (1886), B. L. R. F. B. R. 588; 6 W. R. Act X. R. 71.

⁴ *Post*, pp. 461 *et seq.*

⁵ See *Sankar Nath Mukerji v. Bijoy Gopal Mukerji* (1908), 13 C. W. N. 201.

⁶ *Dayamani Debi v. Srinibash*

Kundu (1906), 33 Calc. 842.

⁷ *Mohunkoowur (Mussamat) v. Zogamun Singh (Baboo)* (1802), Marsh. 166; 1 Hay, 272; *Raie Churn Paul v. Suroop Chunder Mytee* (1868), 9 W. R. C. R. 598. See below.

⁸ *Bijoy Gopal Mukerji v. Krishna Mahishi Debi (Srimati)* (1907), 34 I. A. 87; 34 Calc. 329; 11 C. W. N. 424; 9 Bom. L. R. 602; *post*, pp. 461 *et seq.*

⁹ *Subba Reddi v. Chengalamma* (1898), 22 Mad. 126.

¹⁰ *Ramakal v. Ramasami Naickan* (1899), 22 Mad. 522; *Hanuman Prasad Singh v. Bhagavati Prasad* (1897), 19 All. 357.

¹¹ *Kanni Ammal v. Ammakannu Ammal* (1899), 23 Mad. 504.

¹² *Janokinath Mukhopadhyaya v. Mothuranath Mukhopadhyaya* (1883), 9 Calc. 580; 12 C. L. R. 15; *Hari Narayan Jog v. Vitai* (1907), 31 Bom. 560; 9 Bom. L. R. 1049. This alienation will not prevent the right of survivorship of a widow or sister, *ibid.*; *Kanni Ammal v. Ammakannu Ammal* (1899), 23 Mad. 504.

alienation will enure until her death,¹ or if she has inherited the property as widow, until her remarriage.²

This applies even when the widow holds under an arrangement which prevents her alienating, without expressly prohibiting her from alienating the estate for her life.³

A compromise may or may not amount to an alienation. Whether it does so depends upon the circumstances.⁴

As to partition between co-widows, see *ante*, pp. 312, 313.

The personal interest of the restricted owner may be sold in execution of a decree.⁵ Execution of decrees.

Where the interest of a widow was sold, her heirs were held to be entitled to the proceeds.⁶

For purposes of legal necessity,⁷ caused by circumstances over which she had no control,⁸ a widow or other woman with a restricted estate can alienate or charge⁹ the property When widow, etc., can alienate.

¹ *Vadali Mamudigadu v. Kotipalli Ramayya* (1902), 26 Mad. 334; *Sreeramulu v. Kristamma* (1902), 26 Mad. 143; *Bhagavatamma v. Pampanna Gadul* (1865), 2 Mad. H. C. 393; *Kamavadhuni Venkata Subbaiya v. Joysa Narasingappa* (1866), 3 Mad. H. C. 116; *Munnalal Chaudri v. Gajraj Singh* (1889), 17 Calc. 246; *Gobindmani Dasi v. Shamlal Byak* (1864), B. L. R. F. B. R. 48; W. R. F. B. R. 165; *Tarinee Churn Banerjee v. Nund Coomar Banerjee* (1864), 1 W. R. C. R. 47; *Ram Gutty Kurmoker v. Boistub Churn Mojomdar* (1867), 7 W. R. C. R. 167; *Radha (Mussamut) v. Kour (Mussamut)*, W. R. 1864, C. R. 148; *Ramchandra Mankeshwar v. Bhimrav Ravji* (1877), 1 Bom. 577; *Melgirappa v. Shivappa* (1869), 6 Bom. H. C. A. C. 270; *Mayaram Bhairam v. Motiram Govindram* (1865), 2 Bom. H. C. 331 (2nd ed., 313); *Prag Das v. Hari Kishn* (1877), 1 All. 503; *Loll Soonder Doss v. Hurry Kishen Doss* (1862), Marsh. 113; 1 Ind. Jur. O. S. 32; 1 Hay, 33; *Haradhun Naug v. Issur Chunder Bose* (1866); 6 W. R. C. R. 222. Cf. cases, *ante*, p. 193, note 5.

² See *Haribhai v. Uka* (1899), 1 Bom. L. R. 201.

³ *Sahodra (Mussummat Bebea) v.*

Jung Bahadoor (Roy) (1881), 8 I. A. 210; 8 Calc. 224.

⁴ See *Kambinayani Tinnaji v. Kambinayani Subbaraju* (1910), 33 Mad. 473.

⁵ Act V. of 1908, s. 60; *Kanni Ammal v. Ammakannu Ammal* (1899), 23 Mad. 504.

⁶ *Chooney Money Dassee v. Ram Kinkur Dutt* (1900), 28 Calc. 155; 5 C. W. N. 242.

⁷ *Collector of Masulipatam v. Cavalry Venkata Narrainapah* (1861), 8 M. I. A. 529, at p. 551; 2 W. R. P. C. 61, at p. 64; *Raj Lukhee Dabea v. Gokool Chunder Chowdhry* (1869), 13 M. I. A. 209; 3 B. L. R. P. C. 57; 12 W. R. P. C. 47; *Kurun Sing (Rao) v. Mahomed Fyz Ali Khan* (1871), 14 M. I. A. 187; 10 B. L. R. 1; *Jagannath Vithal v. Apaji Vishnu* (1868), 5 Bom. H. C. A. C. 217, at p. 221; *Panchoooree Mahtoon v. Kalee Churn* (1868), 9 W. R. C. R. 490; *Bulwunt Narain Singh v. Ram Kishen Singh*, W. R. 1864, C. R. 102.

⁸ *Hafzoonnissa Begum v. Radhabinode Misser*, Ben. S. D. A., 1856, p. 595, at p. 605.

⁹ This would include a permanent or long lease: see *Felaram Roy v. Bagalanand Banerjee* (1910), 14 C. W. N. 895.

so as to bind the reversion. Where the income is sufficient to meet the necessity, the reversioners are not bound.¹

She cannot do so by will.²

“For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, a widow has a larger power of disposition than that which she possesses for purely worldly purposes.”³

When she does not purport to bind the estate, the fact that there was necessity does not enlarge the operation of the transfer.⁴

Whether she intended by the transaction to bind the estate or merely to deal with her own interest depends upon the terms of the document.⁵

Duty of purchaser or mortgagee and burden of proof.

The principles laid down in the leading case of *Hunooman Persaud Panday v. Munraj Koonweree (Mussumat Babooee)*,⁶ and the cases following it, as to what amounts to necessity, what is the duty of a person dealing with the manager for an infant heir, and the burden of proof where an alienation by such manager is in question,⁷ apply equally to the cases of persons dealing with Hindu widows or other restricted female owners.⁸

Circumstances of pressure.

She cannot raise the money until the necessity has actually arisen.⁹ There must be a clear necessity for raising it, and an actual pressure.¹⁰

The “necessity” involves some notion of pressure from without and not merely a desire to better or to develop the estate.¹¹ It involves generally circumstances of pressure which

¹ *Ravaneswar Prasad Singh v. Chandi Prasad Singh* (1911), 38 Calc. 721. See *Kaleenarain Roy Chowdhry v. Ram Coomar Chand*, W. R. 1864, C. R. 14.

² *Ante*, p. 454.

³ *Collector of Masulipatam v. Cavalry Vencata Narrasnapah* (1861), 8 M. I. A. 529, at p. 551; 2 W. R. P. C. 61, at p. 64.

⁴ *Prosunno Kumar Nandi v. Umedur Raja Chowdhry* (1908), 13 C. W. N. 353.

⁵ See *Damodar v. Jankibar* (1903), 5 Bom. L. R. 350.

⁶ (1856) 6 M. I. A. 393; 18 W. R. C. R., note to p. 81.

⁷ *Ante*, pp. 273-285.

⁸ *Kameswar Pershad (Baboo) v. Run Bahadoor Singh* (1880), 8 I. A. 8; 6 Calc. 843; 8 C. L. R. 361; *Amarnath Sah (Lala) v. Achan Kuar*

(*Rani*) (1892), 19 I. A. 196; 14 All. 420; *Maheshwar Baksh Singh v. Ratan Singh* (1896), 23 I. A. 57; 23 Calc. 766; *Cavalry Vencata Narrasnapah v. Collector of Masulipatam* (1867), 11 M. I. A. 619; 10 W. R. P. C. 47.

⁹ *Mullakal v. Mada Chetty*, 6 Mad. Jur. 261, referred to in Mayne's “Hindu Law,” 7th ed., p. 852.

¹⁰ *Dharam Chand Lal v. Bhawani Misra* (1897), 24 I. A. 183; 25 Calc. 189; 1 C. W. N. 697; *Byjnath Pershad (Lalla) v. Bissen Behavee Sahoy Singh* (1873), 19 W. R. C. R. 79.

¹¹ *Ganap v. Subbi* (1908), 32 Bom. 577; 10 Bom. L. R. 927. See *Himmat Bahadur v. Bhawani Kunwar* (1908), 30 All. 352; affirmed on appeal, *Bhawani Kunwar v. Himmat Bahadur* (1911), 33 All. 342; 15 C. W. N. 466; 13 Bom. L. R. 384.

render the raising of money necessary for the protection or preservation of the estate.

Where there is no legal necessity, although the payment be for the benefit of the estate, as where a co-sharer paid the widow's share of the Government revenue, an alienation cannot be supported.¹

An alienation cannot be supported by debts which have been paid by the widow during her husband's lifetime.²

A family settlement, whereby a Hindu widow gave up a portion of the property was held not to bind the reversioners, who were then born, and not parties thereto.³

The right to alienate for purposes of necessity extends to all property which has come to a woman as such restricted heir. Right to alienate extends to all property.

Where a share has been allotted to a widow on partition with a co-widow, she can alienate it for necessity.⁴ She cannot without necessity alienate property even if it has been made over to her for her maintenance.⁵

The restrictions on a Hindu widow's power of alienation are not relaxed in reference to an ancestral family business which has devolved upon her. Family business. In all such cases the authority of the manager to pledge ancestral estate without the consent of the parties interested depends on proof that alienation is necessary to pay the debts of the business; and the onus of proof rests on the party who seeks to enforce his security.⁶

An alienation by one of two co-widows is not *ipso facto* Co-widows. invalid with reference to the interest of the other co-widow or of persons interested in the reversion.⁷

The following are proper objects for the alienation of the property:— What are "necessary" purposes.

- (a) The payment of the funeral or periodical *sradh* ceremonies and annual ceremonies of the husband,⁸ or Religious ceremonies.

¹ *Upendra Lal Mukerjee v. Girdra Nath Mukherjee* (1898), 25 Cal. 565; 2 C. W. N. 425.

² *Himmat Bahadur v. Bhawani Kunwar* (1908), 30 All. 352; affirmed on appeal, *Bhawani Kunwar v. Himmat Bahadur* (1911), 33 All. 342; 15 C. W. N. 466; 13 Bom. L. R. 354.

³ *Asharam Sathani v. Chandi Churn Mukerjee* (1908), 13 C. W. N. 147.

⁴ *Takurmani Singh v. Dai Rani Koeri* (1906), 33 Cal. 1079.

⁵ *Seith Gobin Das v. Ranchore* (1871), 3 N. W. P. 324, see *ante*, p. 422.

⁶ *Sham Sunder Lal v. Achhan Kunwar* (1898), 25 I. A. 183; 21 All. 71; 2 C. W. N. 720. See *ante*, p. 263.

⁷ *Subbammal v. Arudaiyammal* (1906), 30 Mad. 3.

⁸ *Mutteeram Kowar v. Gopaul Sahoo* (1873), 11 B. L. R. 416; 20 W. R. C. R. 187; *Lakshminarayana v. Dasu* (1887), 11 Mad. 288; *Chumun Lall v. Gunput Lall (Lalla)* (1871), 16 W. R. C. R. 52; *Junmejoy Mullick (Chowdhry) v. Russomoyee Dosee* (1868), 1 B. L. R. 418, note; 10 W. R. C. R. 309; "Daya."

other last full owner, and of such religious ceremonies as he was bound to perform, as for instance his mother's *sradh*.¹

Pilgrimage.

A pilgrimage by a widow for her husband's religious benefit, as by a *sradh* at Gya, might justify an alienation,² but a pilgrimage for her own religious benefit,³ although it may indirectly benefit her husband,⁴ does not justify an alienation, except perhaps of a small portion.⁵

A feast given on return from a pilgrimage does not justify an alienation.⁶

Gifts.

In some old cases gifts of a small portion of the corpus of the husband's property to Brahmins and to idols were upheld,⁷ and in a recent case a gift of a very small portion of the property by a daughter was justified.⁸ Modern authority would apparently, in most cases, repudiate such gifts on the ground that they conduce to the spiritual benefit of the widow alone.⁹ It is clear that a dedication of a substantial portion of the property for the endowment of the idol is voidable.¹⁰

The digging of a tank, although a meritorious act, does not justify a sale.¹¹

chap. xi. s. i. para. 61. In *Tatayya v. Ramakrishnamura* (1910), 34 Mad. 288, at p. 290, the Court said: "We think we are warranted in holding that if the property sold or gifted bears a small proportion (which it is impossible to define more exactly) to the estate inherited and the occasion of the disposition or expenditure is reasonable and proper according to the common notions of the Hindus, it is justifiable and cannot be impeached by the reversioner."

¹ *Junmejy Mullick* (Chowdhry) *v. Russomoyee Dossee* (Sreemutty) (1868), 11 B. L. R. 418, note; 10 W. R. C. R. 309.

² *Mohamed Ushruf v. Brojessuree Dossee* (1873), 11 B. L. R. 118; 19 W. R. C. R. 426; *Mutteeram Kowar v. Gopaul Sahoo* (1873), 11 B. L. R. 416; 20 W. R. C. R. 187. See *Tarni Prasad Chatterjee v. Bholanath Mockerjee* (1891), 21 Calc. 190, note; *Ganpat v. Tulairam* (1891), 36 Bom. 88; 13 Bom. L. R. 860. Cf. *Ram Kant Chuckerbutty v. Chunder Narai Dutta Roy* (1878), 2 C. L. R. 474.

³ *Huro Mohun Audhikaree v. Auluck Monee Dassee* (1864), 1 W. R. C. R. 252. See *Hari Kissen Bhagat v. Bajrang Sahai Singh* (1909), 13 C. W. N. 544, at p. 547.

⁴ *Rama v. Ranga* (1885) 8 Mad. 552.

⁵ See *Ibid.*, at p. 554.

⁶ *Makhan Lal v. Gayan Singh* (1910), 33 All. 255.

⁷ *Jugjeevun Nuthoojee v. Deo Sun-lar Kaveeram* (1812), 1 Borr. 394; *Kupoor Bhuraneer v. Sevrakram Seeshunkur* (1815), 1 Borr. 405. Here there was a gift of a house. In *Chooneelal v. Jusoo Mull Deveelas* (1813); 1 Borr. 55, the law officer of the Sadr Adawlut held that the widow cannot make a gift of landed property to her priest. See *Ram Kawal Singh v. Ram Kishore Das* (1895), 22 Calc. 506; *Ram Chunder Surma v. Gungagovind Bunhoojiah* (1826), 4 Ben. Sel. R. 117 (new edition, 147).

⁸ *Tatayya v. Ramakrishnamma* (1910), 34 Mad. 288.

⁹ *Kartick Chunder Chuckerbutty v. Gour Mohun Roy* (1864), 1 W. R. C. R. 48.

¹⁰ *Chooramani Dasi v. Baidya Nath Naik* (1904), 32 Calc. 473; *Ram Kawal Singh v. Ram Kishore Das* (1895), 22 Calc. 506. See *Bhaaskar Trimphak Acharya v. Mahadev Ramji* (1869), 6 Bom. H. C. O. C. 1. It has been held that she can do so with the consent of the reversioners, *Brayanath Baisakh v. Matilal Baisakh* (1869), 3 B. L. R. O. C. 92.

¹¹ *Runjeet Ram Koolal v. Mahomed Waris* (1873), 2 W. R. C. R. 49.

- (b) The payment of the debts of a previous full owner,¹ Payment
of debts.
for the payment of which no provision has been
made.²

She is not obliged to pay such debts out of income.³

As in the case of the widow the obligation is one of religious duty she is entitled to alienate in respect of debts which are barred by the law of limitation,⁴ or by any other enactment, which permits the debtor to evade the obligation.⁵ In the case of debts contracted for immoral purposes she would, it is submitted, only be entitled to alienate where the debt can be enforced in a court of law.

She must in paying such debts act fairly to all the creditors as a body, and not unduly prefer any of them.⁶ She is not obliged to wait until the creditor has brought pressure by way of a suit,⁷ but there must be a pressure of some kind.⁸

- (c) The payment of Government Revenue or other dues Government
Revenue, etc.
the non-payment of which would imperil the estate,⁹
such as the satisfaction of a decree, even if such

See, however, *fitwah* of pundits in *Kashinath Basak v. Harasundari Dusi* (1826), "Vyavastha Darpana," 2nd ed., 101.

¹ Colebrooke's "Digest," chap. i, p. 270; "Vyavahara Mayukha," chap. v. s. iv. paras. 17, 20; *Debi Dayal Sahoo v. Bhan Pertab Singh* (1903), 31 Calc. 433; 8 C. W. N. 408; *Jayanti Subbiah v. Alamelu Mangamma* (1902), 27 Mad. 45; *Lakshman Ramchandra Joshi v. Satyabhamabai* (1877), 2 Bom. 494, at p. 499; cases note 8, below. See *Mareshar Baksh Singh v. Ratan Singh* (1896), 23 I. A. 57; 23 Calc. 766; *Hemchund Majoondar v. Tara Munnee (Mussumaut)* (1811), 1 Ben. Sel. R. 359 (new edition, 481); *Lukmeeram v. Khooshalee* (1818), 1 Borr. 412, and cases cited in Norton's L. C. pp. 641, 642; *Soorjoo Pershad v. Krishan Pertab Bahadoor Sahie (Rajah)* (1869), 1 N. W. P. 46; *Felaram Roy v. Bagalanand Banerjee* (1910), 14 C. W. N. 895; in *Bhau Babaji v. Gopala Mahipati* (1886), 11 Bom. 325, an alienation for the purpose of paying the debts of a father-in-law was upheld.

² In *Tiluck Roy v. Phoolman Roy* (1867), 7 W. R. C. R. 450, the debt

was provided for under the terms of a farm lease. As to debts paid by a widow during her husband's lifetime, see *ante*, p. 463.

³ *Ramasami Chetti v. Mangaikarasu Nachiar* (1894), 18 Mad. 113.

⁴ *Chimnaji Govind Godbole v. Dinkar Dhondev Godbole* (1886), 11 Bom. 320; *Kondappa v. Subba* (1889), 13 Mad. 189; *Udai Chunder Chuckerbutty v. Ashutosh Das Mozumdar* (1893), 21 Calc. 180. In this respect her position is different from that of a manager. See *ante*, p. 265.

⁵ As, for instance, the Dekhan Agriculturists' Relief Act (XVII. of 1879), *Bhau Babaji v. Gopala Mahipati* (1886), 11 Bom. 325.

⁶ *Rangulbhar Kalyandas v. Vilayak Vishnu* (1887), 11 Bom. 666.

⁷ *Kashur Singh v. Roop Singh* (1871), 3 N. W. P. 4.

⁸ *Ante*, p. 462.

⁹ *Srimohan Jha v. Brijbehary Misser* (1909), 36 Calc. 763; W. Macnaghten's "Hindu Law," vol. ii. p. 293; *Gooroopersaud Jena v. Mud-dunmohun Soor*, Ben. S. D. A., 1859, p. 980; *Sreenath Roy v. Ruttunmalla Chowdhuran*, Ben. S. D. A., 1859, p. 421.

decree was obtained against a female representing the estate.¹

Costs.

(d) Reasonable² costs of necessary litigation "in recovering or preserving the estate, or in defending her rights,"³ or other necessary legal expenses, such as the cost of obtaining a succession certificate,⁴ but not the costs of imprudent litigation which is not for the benefit of the estate.⁵

Repairs, etc.

(e) The protection and preservation of the estate,⁶ such as the cost of repairs and other expenses necessary to the well-being of the estate.⁷

It has been held that she cannot sell for the purpose of paying a personal debt, such as arrears of road cess,⁸ payable under the Public Demands Recovery Act,⁹ but as this is a debt which may be incurred in the proper management of the estate, it is submitted that it cannot be laid down generally that a widow cannot alienate for this purpose.

Her maintenance.

(f) To provide for her maintenance, and the expenses of such religious ceremonies as a woman in her position is required to perform.¹⁰

Maintenance of dependent members of family.

(g) To provide for the maintenance of dependent members

¹ *Karimuddin (Munshi) v. Gobind Krishna Narain (Kunwar)* (1909), 36 I. A. 138; 31 All. 497; 13 C. W. N. 1117; 11 Bom. L. R. 911.

² *Bhimaraddi v. Bhaskar* (1904), 6 Bom. L. R. 628.

³ *Karimuddin (Munshi) v. Gobind Krishna Narain (Kunwar)* (1909), 36 I. A. 138; 31 All. 497; 13 C. W. N. 1117; 11 Bom. L. R. 911; *Debi Dayal Sahoo v. Bhan Pertap Singh* (1903), 31 Calc. 433; 8 C. W. N. 408; *Amjad Ali v. McNiram Kalita* (1885), 12 Calc. 52. See *Pannalal Seal v. Bamarundari Dasi (Srimati)* (1871), 6 B. L. R. 732; *Phool Koer (Mussamut) v. Dabee Pershad* (1869), 12 W. R. C. R. 187.

⁴ *Srimohan Jha v. Brijbehary Misser* (1909), 36 Calc. 753.

⁵ *Indar Kuvar v. Lalla Prasad Singh* (1882), 4 All. 532.

⁶ *Soorjoo Pershad v. Krishan Pertab Bahadoor Sahie (Rajah)* (1869), 1 N. W. P. 48.

⁷ See *Hurry Mohun Rai v. Gonesh Chunder Doss* (1884), 10 Calc. 823.

⁸ *Srimohan Jha v. Brijbehary Masser* (1909), 36 Calc. 753.

⁹ Act VII (Ben. C.) of 1880.

¹⁰ *Sadashiv Bhaskar Joshi v. Dhakubai* (1880), 5 Bom. 450; *Soorjoo Pershad v. Krishan Pertab Bahadoor Sahie (Rajah)* (1869), 1 N. W. P. 46; *Sreenath Roy v. Ruttumalla Chowdhrair*, Ben. S. D. A., 1859, p. 421; "Daya-Krama Sangraha," chap. i. s. ii. para. 6; Strange's "Hindu Law," vol. i. p. 246; vol. ii. p. 251; *Raj Chunder Paramanik (Doe dem) v. Bulloram Binwas* (1837), 1 Fulton, 133. Where the next heir agrees to support her she cannot sell, *Macnaghten's "Hindu Law,"* vol. ii. p. 211. She can provide for her maintenance out of the estate even though she be living with a paramour, *Amjad Ali v. Moniram Kalita* (1885), 12 Calc. 52. It has been held that she can borrow money for the purpose of cultivating the estate, so that she may be maintained, *Oodey Singh (Koer) v. Phool Chund* (1873), 5 N. W. P. 197.

of her family, whom her husband or other last full owner (as the case may be) was legally or morally bound to support, and for their marriages or other necessary religious ceremonies,¹ on a reasonable scale, having regard to the amount of the property and the position of the family.²

The maintenance of the grandsons of the husband³ and the performance of the *śradh* of a mother⁴ have been held to justify a sale.

(h) To provide for the marriage expenses of a daughter,⁵ Marriage of daughter.
or other female member of the family.⁶

In one case where a Hindu widow borrowed a sum of money for the purpose of defraying the marriage expenses of a son's daughter, the Court held that such sum was recoverable from the reversioners after the widow's death, although it was not charged on the estate.⁷

When upon the death of a Hindu governed by the Mitakshara law, his property is taken by the widow, a gift by the widow to her daughter, on the occasion of her marriage, out of the estate of her husband is within her power, provided that the portion so given is reasonable in amount,⁸ i.e. that it does not exceed one-fourth of the property.⁹ There would be the same right according to the Bengal school.¹⁰ Gift to daughter on marriage.

This rule has been extended to a gift at the time of the *gowna* or *dwiragan* ceremony, when the wife, upon the attainment of puberty, goes to reside with her husband.¹¹ A gift to a son-in-law on the occasion of the marriage has been also upheld.¹²

¹ *Debi Dayal Sahoo v. Bhan Pertap Singh* (1903), 31 Calc. 433; 8 C. W. N. 408; *Gunpal v. Tulsiram* (1911), 13 Bom. L. R. 860 (betrothal of daughter); *Preaj Narain v. Ajodhyapurshad* (1848), 7 Ben. Sel. R. 513 (new edition, 602) (marriage of daughter); *Rustam Singh v. Moti Singh* (1896), 18 All. 474 (Do.). In this last case the mother alienated property which had descended to her from her father.

² See *Doorhyar Roy v. Dulsinghar Singh* (1869), 12 W. R. C. R. 367.

Chumun Lall v. Gunput Lall (Lalla) (1871), 16 W. R. C. R. 52. A grandfather cannot be compelled to maintain his grandchildren, *ante*, p. 205, but he is morally bound to maintain them.

⁴ *Srimohan Jha v. Brijbehary Muser* (1909), 36 Calc. 753.

⁵ *Chumun Lall v. Gunput Lall (Lalla)* (1871), 16 W. R. C. R. 52; *Makhan Lal v. Gayan Singh* (1910),

33 All. 255.

⁶ See *ante*, pp. 227, 260, 276.

⁷ *Ramcoomar Mitter v. Ichamoyi Dasi* (1880), 6 Calc. 36; 6 C. L. R. 429; see *post*, p. 473.

⁸ *Churamun Sahu v. Gopi Sahu* (1909), 37 Calc. 1, at p. 8; 13 C. W. N. 994, at p. 999. This applies also when the widow has taken as mother, *Ramasami Ayyar v. Vengidusami Ayyar* (1898), 22 Mad. 113.

⁹ *Churamun Sahu v. Gopi Sahu* (1909), 13 C. W. N. 994, at p. 999; "Mitakshara," chap. i. s. vii. paras. 5-14.

¹⁰ *Kashinath Basak v. Harasundari Dasi* (1826), "Vyavastha Darpana," 2nd ed., 97, at p. 101. The provision of a portion for a daughter is there put as a religious purpose; see *ante*, p. 29.

¹¹ *Churaman Sahu v. Gopi Sahu* (1909), 37 Calc. 1; 13 C. W. N. 994.

¹² *Ramasami Ayyar v. Vengidusami Ayyar* (1898), 22 Mad. 113. ^a

Latitude in
exercise of
powers.

"A widow, like a manager¹ of the family, must be allowed a reasonable latitude in the exercise of her powers, provided, as Mr. Justice West says in *Chimnaji Govind Godbole v. Dinkar Dhondev Godbole*,² 'she acts fairly to the expectant heirs.'"³

Thus a sale by a widow in order to pay off a mortgage, which is not yet due, may be justifiable.⁴

A widow "is not bound to mortgage any portion of her husband's estate, if that would be more prejudicial to her than a sale, by reducing her income to a greater extent, as she does not hold the property for the benefit of the reversioner, nor is she bound to raise money on her personal security."⁵

It is sometimes impossible for a widow to arrange a sale of a portion of the property exactly sufficient to pay the amount required. When under these circumstances she sells more, the sale would be justified.⁶

When she raises money by a mortgage she can borrow only to the extent of the necessity.⁷

The form of the alienation is immaterial provided that the document purports to deal with the whole interest in the property. The fact that the widow purported to alienate the property as guardian of a son, whose adoption turned out to be invalid, was held not to depreciate the validity of the alienation.⁸

Consent of
reversioners
to alienation.

A sale of the whole of her interest in the property or (it is submitted) in a portion thereof,⁹ by a female holding a qualified estate, although it be not on account of a legal necessity,

¹ *Ante*, p. 260

² (1886), 11 Bom. 320, at p. 324.

³ *Venkaji Shrivdhar v. Vishnu Babaji Beri* (1893), 18 Bom. 534, at p. 536.

⁴ *Ibid.*

⁵ *Singam Setti Sanjivu Kondaya v. Dravpadi Bayamma* (1907), 31 Mad. 153, at pp. 154, 155; *Nabakumar Haldar v. Bhabasundari Debi* (1869), 3 B. L. R. A. C. 375; *Phool Chund Lall v. Rughoobuns Suhaye* (1868), 9 W. R. C. R. 107; cf. *Mohamund Mondul v. Nafur Mondul* (1899), 26 Calc. 820; 3 C. W. N. 470.

⁶ See *Kamakhaprasad Roy v. Jagadamba Dasi (Srimati)* (1870), 5 B. L. R. 508, at p. 520; *Felaram Roy v. Bagalanand Banerjee* (1910), 14 C. W. N. 895; *post*, p. 492; *Chatranarayan (Lala) v. Ubi Kunwari* (1868), 1 B. L. R. (A. C.) 201; *Sugeeram Begum v. Judoobuns Suhaye* (1868), 9 W. R. C. R. 284.

⁷ See *Lalit Panday v. Sridhar Deo Narayan Singh* (1870), 5 B. L. R. 176.

⁸ *Purbhu Lall (Lala) v. Mylne* (1887), 14 Calc. 401.

⁹ *Pulin Chandra Mandal v. Bolai Mandal* (1908), 35 Calc. 939; 12 C. W. N. 837, differing from *Marudamuthu Nadan v. Srinivasa Pillai* (1898), 21 Mad. 128 in which the Madras High Court considered that a sale of a portion of the property would not hold good. The last-named case was followed in *Muthuveeru Mudaliar v. Vythilinga Mudaliar* (1908), 32 Mad. 206. See also *Rangappa Naik v. Kamti Naik* (1908), 31 Mad. 366, at p. 370. In *Bajrangi Singh v. Manokarnika Bakhsh Singh* (1907), 35 I. A. 1; 30 All. 1; 12 C. W. N. 74; 9 Bom. L. R. 1348; the sales of successive portions, and in *Vinayak v. Govind* (1900), 25 Bom. 129; 2 Bom. L. R. 820, a sale of a portion only were upheld.

transfers the whole interest in the property, if it be effected with the consent, at the time of the transaction or thereafter,¹ of all² the presumptive reversioners, that is to say, of all the members of the class of persons who would be entitled to succeed to a full estate in the property, if the widow had died at the moment of the sale,³ or (if the consent be subsequent to the sale) at the time of the consent.

Ordinarily the consent of the whole body of persons constituting the next reversion should be obtained,⁴ though there may be cases in which special circumstances may render the strict enforcement of the rule impossible.⁵ "At all events there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one, and one justified by Hindu law."⁶

Where the immediate reversioner would, if she succeeded,

¹ *Bajrangi Singh v. Manokarnika Bakhsh Singh* (1907), 35 I. A. 1; 30 All. 1; 12 C. W. N. 74; 9 Bom. L. R. 1348.

² *Radha Shyam Sircar v. Joyram Senapati* (1890), 17 Calc. 896.

³ *Bajrang Singh v. Manokarnika Bakhsh Singh* (1907), 35 I. A. 1; 30 All. 1; 12 C. W. N. 74; 9 Bom. L. R. 1348; *Collector of Masulipatam v. Cavalry Vencatu Narrainapah* (1861), 8 M. I. A. 529, at p. 551; 2 W. R. P. C. 61, at p. 64; *Srimuty Dibeah (Rany) v. Koonid Luta (Rany)* (1847), 4 M. I. A. 292; *Rangappa Naik v. Kunti Naik* (1908), 31 Mad. 366; *Pilu v. Babaji* (1909), 34 Bom. 165; 11 Bom. L. R. 1291; *Nobo Kishore Sarma Roy v. Hari Nath Sarma Roy* (1884), 10 Calc. 1102; *Brjanath Baisakh v. Matilal Baisakh* (1869), 3 B. L. R. O. C. 92; *Raj Bullubh Sen v. Oomesh Chunder Roop* (1888), 5 Calc. 44; 3 C. L. R. 384; *Vinayak Vithal Bhangre v. Govind Venkatesh Kulkarni* (1900), 25 Bom. 129; 2 Bom. L. R. 820; *Kishen Geer (Mohunt) v. Busgeet Roy* (1870), 14 W. R. C. R. 379; *Trilochun Chuckerbutty v. Umesh Chunder Lahiri* (1880), 7 C. L. R. 57; *Kali Kishore Pal v. Abdul Karim* (1897), 2 C. W. N. 132; *Radha Mussamut v. Kour (Mussamut)*, W. R. 1864, C. R. 148. See also cases collected in Norton's Leading Cases, pp.

626, 627. For a contrary view, see *Ramphal Rai v. Tula Kuari* (1883), 6 All. 116; *Varjwan Rangji v. Ghelji Gokaldas* (1881), 5 Bom. 563.

⁴ *Raj Lukhee Dabee v. Gokool Chunder Chowdhry* (1869), 13 M. I. A. 209, at p. 228; 3 B. L. R. P. C. 57, at p. 63; 12 W. R. P. C. 47, at p. 50; *Radha Shyam Sircar v. Joy Ram Senapati* (1890), 17 Calc. 89. In a Bombay case (*Vinayak v. Govind* (1900), 25 Bom. 125; 2 Bom. L. R. 820), where a man died leaving a widow, a sister, and her son, the Court upheld an alienation by the widow with the consent of the sister's son on the ground that he was the only male reversioner, and that his consent showed the propriety of the sale.

⁵ *Bajrang Singh v. Manokarnika Bakhsh Singh* (1907), 35 I. A. 1, at p. 16; 30 All. 1, at p. 21; 12 C. W. N. 74, at p. 83; 9 Bom. L. R. 1348.

⁶ *Raj Lukhee Dabee v. Gokool Chunder Chowdhry* (1869), 13 M. I. A. 209, at p. 228; 3 B. L. R. P. C. 57, at p. 63; 12 W. R. P. C. 47, at p. 50; *Varjwan Rangji v. Ghelji Gokaldas* (1881), 5 Bom. 563, at p. 571; *Vinayak v. Govind* (1900), 25 Bom. 129, at p. 139; 2 Bom. L. R. 820. In *Ram Krishna Kuppuswami v. Tripurabai* (1911), 13 Bom. L. R. 940, it was held that the consent of the nearest reversioner did not validate an alienation.

be a restricted owner, both her consent and that of subsequent reversioners would be necessary.

The consent of a female reversioner, who would in turn become a restricted owner, is not sufficient.¹ It might, it is submitted, be some evidence to corroborate other evidence of necessity.

There was a controversy as to the basis upon which the right of the widow to sell with the consent of the reversioners rested. The High Court of Bengal favoured the view that the consent derived its force from the power supposed to reside in a widow of accelerating by the surrender of her own interest the interests of the reversioners.² The other view was that the consent of the persons interested to oppose the transaction evidenced its propriety, if not its actual necessity.³ There can be no doubt that such consent is very strong evidence of necessity, and also that such reversioners, either immediate or subsequent, as consented to the alienation will be estopped from disputing it.⁴

The form of consent is immaterial.

Form of
consent.

Consent may take the form of signature or attestation of the document,⁵ and sometimes subsequent acquiescence may imply consent, as for instance by the receipt of rent from the holder of a tenure created by the widow.⁶

The consent to be of any effect must be given with full knowledge of the circumstances and of the effect of the transaction and with an intelligent intention to consent to such effect.⁷ It must be free from any defect, such as fraud or mistake, which would vitiate a contract. It must be given in good faith, and not for an indirect purpose.⁸

Consent by a *purdahnashin* lady requires the strictest possible proof

¹ *Goolab Sing (Koor) v. Rao Kurun Sing* (1871), 14 M. I. A. 176; 10 B. L. R. 1; *Bepin Behari Kundu v. Durga Charan Banerji* (1908), 35 Cal. 1086; 12 C. W. N. 214. See *Akkineri Sreeramulu v. Mullapudi Ramayya* (1902), 25 Mad. 731. There is authority in Bombay that even where the female reversioner would on succession take an absolute estate her consent would not be sufficient, *Varjwan v. Ghelji* (1881), 5 Bom. 563; approved of in *Vinayak v. Govind* (1900), 25 Bom. 129, at pp. 134, 135; 2 Bom. L. R. 820.

² *Post*, pp. 471, 472.

³ *Vinayak v. Govind* (1900), 25 Bom. 129, at p. 133; 2 Bom. L. R. 820; *Pilu v. Babaji* (1909), 34 Bom. 165; 11 Bom. L. R. 1291. See *Madhub Chunder Hajrah v. Gobind Chunder Banerjee* (1868), 9 W. R. C. R. 370.

⁴ Indian Evidence Act (I. of 1872), s. 115; *Gopaul Chunder Manna v. Gour Monee Dossee* (1866), 6 W. R. C. R. 52; *post*, p. 487.

⁵ *Muteecollah (Sheikh) v. Radhabinode Missur*, Ben. S. D. A. 1856, p. 596. As to the effect of an attestation, see *Abhoy Churn Ghose v. Attarmoni Dassee* (1898), 13 C. W. N. 931.

⁶ *Mohesh Chunder Bose v. Ugra Kant Banerjee* (1875), 24 W. R. C. R. 127.

⁷ *Sham Sunder Lal v. Achhan Kunwar* (1898), 25 I. A. 183, at p. 189; 21 All. 71, at p. 80; 2 C. W. N. 729, at p. 733.

⁸ *Kolandaya Sholagan v. Vedamuhu Sholagan* (1896), 19 Mad. 337, where the transfer was made for the purpose of defeating the claims of a subsequent reversioner.

that she was fully aware of the circumstances and of her rights, and that no advantage was taken of her position.¹

The mere omission to object, or to take steps to have the transaction set aside, does not amount to consent.

A sale which has been rendered effective by the necessary consent cannot be questioned by any reversioner subsequently born² or adopted.³

The assent of the reversioner does not affect other reversioners where the widow does not purport to deal with anything beyond her own interest.⁴

A reversioner cannot delegate to his executor the option of assenting Mortgage to the sale.⁵

There is authority that the consent of the reversioner does not of itself validate a mortgage.⁶

This view was based upon the ground that a sale by consent of the reversioners operates as a surrender of her interest by the widow, but as on such surrender an arrangement by which a part of the property can be transferred to some one else is valid,⁷ it is submitted that a mortgage with such consent is valid.

It is clear that the circumstances may create an estoppel binding on the actual parties to the transaction, and that the assent of the reversioners would be cogent evidence of the necessity.⁸

Even with the consent of the reversioners a gift by the gift. restricted owner to any one but the next reversioners is invalid.⁹

A reversioner who consented may be estopped from disputing the gift.¹⁰

A widow, or other female with a restricted estate, can Surrender of restricted estate. surrender¹¹ her whole estate¹² in the whole property¹³ or (it is

¹ See *Bhagwat Dayal Singh (Raja Rai) v. Debi Dayal Sahu* (1908), 35 I. A. 48; 35 Calc. 420; 12 C. W. N. 393; 10 Bom. L. R. 230; and cases cited in Ameer Ali and Woodroffe's Indian Evidence Act (1. of 1872) notes to s. 111; *post*, p. 490.

² *Vinayak Vithal Bhangre v. Govind Venkatesh Kulkarni* (1900), 25 Bom. 129; 1 Bom. L. R. 820.

³ *Raj Kristo Roy v. Kishoree Mohun Mojomdar* (1865), 3 W. R. C. R. 14; *ante*, pp. 192, 193.

⁴ *Rup Narain v. Gopal Devi Musammat* (1909), 36 I. A. 103; 36 Calc. 780; 13 C. W. N. 920; 11 Bom. L. R. 833. See *Jiwan Singh v. Miers Lal* (1895), 23 I. A. 1; 18 All. 146.

⁵ *Hayes v. Harendra Narain* (1904), 31 Calc. 698.

⁶ *Hari Kissen Bhagat v. Bajrang*

Sahai Singh (1909), 13 C. W. N. 544, at p. 548.

⁷ *Post*, p. 472.

⁸ *Ante*, p. 470.

⁹ *Bakhtawar v. Bhagwana* (1910), 32 All. 176; *Rampal Rai v. Tula Kuari* (1883), 6 All. 116.

¹⁰ *Bakhtawar v. Bhagwana* (1910), 32 All. 176.

¹¹ A disclaimer may have the same effect as a surrender, see *Rujoneekant Mitter v. Premchand Bose* (1862), Marsh. 241; 1 Hay, 518.

¹² *Rangappa Naik v. Kamti Naik* (1908), 31 Mad. 366, at pp. 369, 370; *Beharilal v. Madholal Ahir Gyawal* (1891), 19 I. A. 30, at p. 32; 19 Calc. 236, at p. 241.

¹³ *Beharilal v. Madholal Ahir Gyawal* (1891), 19 I. A. 30; 19 Calc. 236. (The observations of the Judicial

submitted) in a portion thereof ¹ to the then next reversioners, whose estate is thereby accelerated and who obtain thereby as full a title as if they had taken directly from the last full owner.²

She can surrender to a female reversioner.³ She cannot surrender to some only of the next reversioners.⁴

A surrender to subsequent reversioners with the consent of the immediate reversioners has been held to be valid.⁵

The surrender is not effectual if it imposes on the reversioners obligations, which would not have existed if the property had devolved on them by inheritance.⁶ *

An arrangement which, besides a surrender of the whole estate, includes an absolute gift of half to the widow is entirely ineffectual so far as such half is concerned,⁷ but there is nothing to prevent an arrangement for the widow's maintenance on a surrender by her,⁸ or an arrangement by which a part of the property is transferred to some one else.⁹

Committee in that case dispose, it is submitted, of the views entertained in *Duli Singh v. Sundar Singh* (1892), 14 All. 377, and *Madan Mohan v. Puran Mal* (1884), 6 All. 288; *Annada Kumar Roy v. Indra Bhusan Mukhopadhyaya* (1907), 12 C. W. N. 49; *Hemchunder Sanyal v. Sarnamoyi Debi* (1894), 22 Calc. 453; *Hunsraj v. Monghibai (Bai)* (1905), 7 Bom. L. R. 622. See *Raj Kishore v. Durga Charan Lal* (1906), 29 All. 71; *Nobo Kishore Sarma Roy v. Hari Nath Sarma Roy* (1884), 10 Calc. 1102; *Noferdoss Roy v. Modhu Soondari Burmonia* (1880), 5 Calc. 732; 5 C. L. R. 551; *Jadumanj Debi (Srimati) v. Saroda Prosunno Mookerjee* (1856), 1 Boul. 120; *Shama Soonduree v. Shurut Chunder Dutt* (1867), 8 W. R. C. R. 500; *Marudamathu Naden v. Srinivasa Pillai* (1898), 2 Mad. 128, at p. 133. For older cases see Norton's Leading Cases, pp. 627, 628.

¹ *Kanuram Deb v. Kashi Chandra Sharma Chowdhuri* (1909), 14 C. W. N. 226. See ante, p. 468, note 9. The Madras Court takes a different view, see *Rangappa Naik v. Kamti Naik* (1908), 31 Mad. 366, at p. 370.

² *Gunga Pershad Kur v. Shumbhoonath Burmun* (1874), 22 W. R. C. R. 393.

³ *Bhupal Ram v. Lachma Kuar* (1888), 11 All. 253. See *Udhar Singh v. Ranee Koonwer (Mussumat)* (1866), 1 Agra, 234; *Rup Ram v. Rewati (Musammam)* (1910), 32 All. 582.

⁴ *Hem Chunder Sanyal v. Sarnamayi Debi* (1894), 22 Calc. 355. See *Annada Kumar Roy v. Indra Bhusan Mukhopadhyaya* (1907), 12 C. W. N. 49.

⁵ *Protap Chunder Roy Chowdhry v. Joy Monce Dabee Chowdhraim (Sreemutty)* (1864), 1 W. R. C. R. 98.

⁶ *Sriramulu Naidu v. Andalammal* (1906), 30 Mad. 145.

⁷ *Hem Chunder Sanyal v. Sarnamayi Debi* (1894), 22 Calc. 354; *Kenuram Deb v. Kashi Chandra Sharma Chowdhuri* (1909), 14 C. W. N. 226. See, however, per Sankaran-Nair, J., in *Challa Subbiah Sastri v. Palury Pattabhiramayya* (1908), 31 Mad. 446, at p. 450. In a similar case the transaction was upheld on the ground that the reversioners were estopped, *Rangappa Naik v. Kamti Naik* (1908), 31 Mad. 366.

⁸ *Kundee Lall (Lalla) v. Kalee Pershad (Lalla)* (1874), 22 W. R. C. R. 307.

⁹ *Challa Subbiah Sastri v. Palury Pattabhiramayya* (1908), 31 Mad. 446.

Where the widow or other female owner has abandoned all worldly affairs the estate of the reversioners may be expedited.¹

Abandonment
of worldly
affairs.

The powers of a Hindu widow, or other restricted heir, who takes under a will, depend upon the terms of the will.²

Powers under
will.

If the will merely confers the interest which the law would give her as heiress, the general law would apply.

Where a widow or other restricted female owner has obtained special powers from a Court under the provisions of an Act of the Legislature, her power to deal with the property is derived from the order of the Court.³

Powers given
by Court.

If she has obtained letters of administration her powers are those of an administratrix.⁴

If she obtains permission to alienate under s. 90 of the Probate and Administration Act,⁵ she can confer an absolute title irrespective of necessity or of the consent of the reversioners.⁶

There is a difference of opinion as to whether the reversioners are responsible for debts incurred by a widow from legal necessity, but in respect of which no document charging the property beyond the widow's lifetime has been executed by the widow.

Debts not
charged on
property.

There can be no reasonable doubt that reasonable trade debts in respect of a family business are payable out of the trade assets whether they are secured or not.⁷

The difficulty arises in cases where they were not incurred in respect of such business. The Allahabad High Court has declined to hold the reversioners responsible.⁸ The Madras High Court,⁹ and a Full Bench of the Calcutta High Court¹⁰ have held them responsible. A recent decision of the Calcutta High Court has adopted the contrary view,¹¹ but the Full Bench case does not appear to have been cited.

¹ See *Hafzoonissa Begum v. Radhabinod Misser*, Ben. S. D. A. 1856, p. 595.

² *Chundermoney Dossee v. Hurry Doss Mitter* (1880), 5 C. L. R. 557.

³ See *Bhugwan Dass v. Luchmee Narain* (1865), 2 W. R. M. A. 19.

⁴ *Loganada Mudali v. Ramaswami* (1863), 1 Mad. H. C. 384.

⁵ Act V. of 1881.

⁶ *Kamikya Nath Mukerjee v. Hari Churn Sen* (1899), 26 Calc. 607.

⁷ *Sakrabai Nathubai v. Maganlal Mulchand* (1901), 26 Bom. 206; 3 Bom. L. R. 738.

⁸ *Dhiraj Singh v. Manga Ram*

(1897), 19 All. 300; *Shamanand v. Har Lal* (1896), 18 All. 471. See *Kallu v. Faiyaz Ali Khan* (1908), 30 All. 394.

⁹ *Regella Jogayya v. Nimushakavi Venkataratnamma* (1910), 33 Mad. 492; *Veerabhadra Aiyar v. Marudaga Nachiar* (1910), 34 Mad. 188.

¹⁰ *Hurry Mohun Rai v. Gonesh Chunder Doss* (1884), 10 Calc. 823; *Ramcoomar Mitter v. Ichamoyi Dasi* (1880), 6 Calc. 36; 6 C. L. R. 429.

¹¹ *Giribala Dassi v. Srinath Chandra Singh* (1908), 12 C. W. N. 769. Cf. *Prosunno Kumar Nandi v. Umedur Raja Chowdhry* (1908), 13 C. W. N. 353.

In one case the Bombay High Court exempted the reversioners,¹ but in a recent case a Full Bench of the same Court considered that they are bound.²

It is submitted that ordinarily reversioners are not responsible. A manager cannot bind the coparceners, or a minor owner personally,³ although he may bind them by a mortgage or sale. Why should a widow be in a different position?

If credit be given to the estate, the creditors would generally insist upon security. Ordinarily it is to the present holder—the widow, to whom the creditors look for payment.

Disposal by will.

A woman cannot (even, it is submitted, with the consent of the reversioners) by will dispose of the property in which she has only a restricted interest.⁴

Proceedings by or against limited heir as representing estate.

A widow or other female restricted owner fully represents the estate in legal or other proceedings with reference thereto.

Where a decree has been made against the last full owner, it can be executed against the female holder as representing the estate.⁵

When a suit is pending against a Hindu defendant at the time of his death intestate, his heir, even though she be a female, should be put in his place in such suit, but her liability is limited to the assets which come to her hands.

When the decree is against the representative of a deceased person, a purchaser at a sale in execution of the decree is bound to satisfy himself that the party sued as the representative of the deceased is his legal representative.⁶

If the widow does not represent the estate nothing passes by the sale,⁷ unless the persons in whom the estate was vested are substantially represented by the widow.⁸

¹ *Gadgeppa Desai v. Apaji Jwanrao* (1879), 3 Bom. 237.

² *Sakrabhai Nathubhai v. Maganlal Mulchand* (1901), 26 Bom. 206; 3 Bom. L. R. 738.

³ *Waghela Rajsanji v. Masludin (Shekh)* (1887), 14 I. A. 89; 11 Bom. 551; *Indur Chunder Singh v. Radhakishna Ghose* (1892), 19 I. A. 90; 19 Calc. 507; *Ranmal Singji (Maharana Shri) v. Vadilal Vakhatchand* (1894), 20 Bom. 61; *Surendra Nath Sarkar v. Atul Chandra Roy* (1907), 34 Calc. 892.

⁴ *Goburdhun Nath v. Onoop Roy* (1865), 3 W. R. C. R. 105.

⁵ *Natha Hari v. Jamni* (1871), 8 Bom. H. C. A. C. 37; *Hari Vydiyanathayyan v. Minakshi Ammal* (1882), 5 Mad. 5.

⁶ *Natha Hari v. Jamni* (1871), 8 Bom. H. C. A. C. 37, at pp. 41, 42.

⁷ *Siva Bhagiam v. Palani Padiachi* (1882), 4 Mad. 401; *Ramasami Chetti v. Saluckai Tevar* (1875), 8 Mad. H. C. 186; *Jatha Naik v. Venktapa* (1880), 5 Bom. 14; *Akoba Dada v. Sakharam* (1885), 9 Bom. 429; *Subbanna v. Venkatakrishnan* (1888), 11 Mad. 408; *Alukmonee Dabee v. Bannee Madhub Chuckerbutty* (1878), 4 Calc. 677; 3 C. L. R. 473.

⁸ There are cases where a widow is put on the record as representing her minor sons. In those cases the question is what is actually sold; see *Achut v. Manjunath* (1896), 21 Bom. 539, and cases cited in Trevelyan's "Law of Minors," 3rd ed., p. 337, note 7.

As she represents the estate the widow or other female restricted owner is the person who should sue for such portion of the estate as is in the hands of others. Suit to recover property.

If she neglect to sue, apparently the immediate reversioner, and failing him, a subsequent reversioner, can sue.¹

The reversioners are bound by a decree fairly obtained in a suit against a female restricted owner, as representing the estate, "unless it could be shown that there had not been a fair trial of the right in that suit—or in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit . . . by any person claiming in succession to the widow."² When decree binds reversioners.

A decision in a suit by or against the limited heir not as representing the estate, but on matters personal to her, does not bind the reversioners.³ For example they are not liable for a wrongful act committed by her.⁴ In some cases where she has acted for the benefit of the estate, the estate may be liable for mesne profits.⁵

It is the duty of the widow to protect the estate, and if she collusively allow judgment to be given and execution to be taken out, the sale will be set aside.⁶

The Allahabad High Court has held that the reversioners can only be bound by decree made after a full contest in a *bonâ fide* litigation, and are not bound by a compromise, even though it be followed by a decree.⁷ There might be a compromise based upon legal necessity. It is only Compromise.

¹ See *Joy Mooruth Koer v. Buldeo Singh* (1874), 21 W. R. C. R. 444; *Chunder Koomar Gangooly v. Raj Kishen Banjeree* (1870), 14 W. R. C. R. 322.

² *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 543, at p. 608; 2 W. R. P. C. 31, at p. 37; *Partab Narain Singh v. Trilokinath Singh* (1884), 11 I. A. 197; 11 Cal. 186; *Hurrinath Chatterjee v. Mothoor Mohun Goswami (Mohuni)* (1893), 20 I. A. 183; 21 Cal. 8; *Madan Mohan Lal v. Akbaryar Khan* (1905), 28 All. 241; *Hanuman Prasad Singh v. Bhagauti Prasad* (1897), 19 All. 357, at p. 371; *Sachit v. Budhua Kuar* (1886), 8 All. 429; *Nand Kumar v. Radha Kuari* (1876), 1 All. 282.

³ *Brāja Lal Sen v. Jiban Krishna Roy* (1898), 26 Cal. 285.

⁴ See *Sadasī Koer v. Ramgobind*

Singh (1911), 15 C. W. N. 857.

⁵ *Lalji Sahay v. Goberdhone Jha* (1909), 15 C. W. N. 859, note.

⁶ *Parekh Ranchor v. Vakhat (Bai)* (1886), 11 Bom. 119; see that case as to the law of limitation.

⁷ *Mahadei v. Baldeo* (1907), 30 All. 75; *Gobind Krishna Narain v. Khunni Lal* (1907), 29 All. 487 (reversed on appeal, see *post*, p. 476 note 5); *Sant Kumar v. Deo Saran* (1886), 8 All. 365; *Ram Sarup v. Ram Dei* (1906), 29 All. 239. See *Sheo Narain Singh v. Khurgo Koerry* (1882), 10 C. L. R. 337. In *Jeram Laljee v. Veerbai* (1905), 5 Bom. L. R. 885, the Court said: "I think that in the absence of authority to the contrary, it would be unsafe to treat anything short of a decree in a suit contested to the end as coming within the ruling in the *Shiva Ganga* case."

then, it is submitted, that such a compromise, as is tantamount to an alienation, is valid.

In Madras¹ the Court has held that the widow as representing the estate is not bound to raise any defence in the case, when she is satisfied that the debt was really due.

In Bengal it has been held² that a widow, as representative of the entire estate in the litigation has the same control with respect to compromise as she has with respect to the assertion of rights and with respect to appeal against an adverse decision. "It is, of course, possible that the trust thus reposed in the widow may be abused without detection, as may the very large discretion which, as the law now stands, she undoubtedly possesses in other matters; but, on the whole, we think it will be found most favourable for the heirs that she should have the power of making an honest compromise at every stage of the proceedings."

It is, it is submitted, clear that a compromise which amounts to an alienation without necessity, or is otherwise distinctly disadvantageous to the reversioners,³ or is made by the restricted heir for her own personal advantage only,⁴ would not bind them, and would be treated as an alienation. Where the compromise amounts to a *bonâ fide* settlement of disputes, it will be upheld.⁵

A compromise which affects only her personal rights is unimpeachable. Parties to suit. It may be sometimes safer to make the next reversioners parties to a suit in order to bind them,⁶ but the widow fully represents the estate, and the rights of subsequent reversioners will not be affected by the inclusion of the immediate reversioners in the suit. In *Srinath Das v. Hari Pada Mitter*,⁷ Jenkins, J., drew a distinction between cases in which the charge was created by the widow and those in which it was not created by her. There is, it is submitted, no ground for this distinction. There is no reason why next reversioners any more than subsequent reversioners should be made parties.

Costs of suit. The estate is liable for the costs of a suit brought against the widow and defended by her on account of the estate.⁸ It may also be liable for the costs of an unsuccessful suit brought by her as representing the estate.⁹

Sale in execution of decree. A sale in execution of a decree, made against a widow or

¹ *Subbammal v. Avudaiyammal* (1906), 30 Mad. 3; *Lakminaraya v. Venkayya* (1907), 17 Mad. L. J. 160.

² *Tarini Charan Ganguli v. Watson* (1869), 3 B. L. R. A. C. 437, at pp. 444, 445; 12 W. R. C. R. 413, at p. 417.

³ *Indro Koor (Mussamul) v. Abdool Burkat (Shaikh)* (1870), 14 W. R. C. R. 146. See *Kambinayani Timmaji v. Kambinayani Subbaraju* (1910), 33 Mad. 473.

⁴ See *Imrit Konwur v. Roop Narain Singh* (1880), 6 C. L. R. 76.

⁵ See *Khunni Lal (Lala) v. Gobind*

Krishna Narain (Kunwar) (1911), 38 I. A. 87; 23 All. 356; 15 C. W. N. 545; 13 Bom. L. R. 427. The test to apply to the transaction is whether the alleged alienee derives title from the restricted owner. *Ibid.*

⁶ See Mayne's "Hindu Law," 7th ed., p. 863, note (y).

⁷ (1899), 3 C. W. N. 637.

⁸ *Chunder Coomar Roy v. Gonesh Chunder Doss* (1886), 13 Calc. 283.

⁹ *Ramkishore Chuckerbutty v. Kally Kanto Chuckerbutty* (1880), 6 Calc. 479; 8 C. L. R. 1.

other female restricted owner and enforcing merely a personal claim, will only transfer the life interest of the widow.¹

This, it is submitted,² applies also when the decree is for a debt incurred on the personal security of the widow, although such debt may have been incurred for legal necessity.³

A sale in execution of a decree made against the restricted owner as representing the estate, will bind the estate if the whole interest be sold, and the debt upon which the decree was based was one which would have bound the reversion, either as being a debt of the last male owner, or as being a debt in respect of a transaction by which she could, and did bind the estate.⁴ Otherwise her interest alone is affected by the sale.⁵

The question frequently arises as to whether on the proceedings the whole interest passes.⁶ "In execution proceedings the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds when they find that it is substantially right."⁷

This question depends upon the nature of the interest sold⁸ and the

¹ *Nugender Chunder Ghose v. Kaminee Dossee (Sreemutty)* (1867), 11 M. I. A. 241; 8 W. R. P. C. 17; *Braja Lal Sen v. Jiban Krishna Roy* (1898), 26 Calc. 285; see *Mohima Chunder Roy Chowdhuri v. Gouri Nath Dey Chowdhuri* (1897), 2 C. W. N. 162; *Jugol Kishore v. Jotindromohun Tagore (Maharajah)* (1884), 11 I. A. 66; 10 Calc. 985; *Narana Maaya v. Vasteva Karanta* (1893), 17 Mad. 208; *Baijun Doobey v. Brij Bhookun Lall Awusti* (1875), 2 I. A. 275; 1 Calc. 133; 24 W. R. C. R. 306; *Mohima Chunder Roy Chowdhry v. Ram Kishore Acharjee Chowdhry* (1875), 15 B. L. R. 142; 23 W. R. C. R. 174; *Kisto Moyee Dassee v. Prosunno Narain Chowdhry* (1866), 6 W. R. C. R. 304; *Kristo Gobind Majumdar v. Hem Chunder Chowdhry* (1889), 16 Calc. 511; *Ram Shewuk Roy v. Sheo Gobind Sahoo* (1867), 8 W. R. C. R. 519; *Radha Mohun Mundul v. Soshi Bhoosun Binwas* (1878), 3 C. L. R. 530.

² See ante, p. 473.

³ *Kallu v. Fayaz Ali Khan* (1908), 30 All. 394.

⁴ *Jugol Kishore v. Jotindro Mohun Tagore (Maharajah)* (1884), 11 I. A. 66; 10 Calc. 985.

⁵ *Ranjit Singh (Raja) v. Ram Chandra Mookerjee* (1899), 4 C. W. N. 415.

⁶ See *Baroda Kanta Chattopadhyaya v. Jatindra Narain Roy* (1895), 22 Calc. 974.

⁷ *Bissessur Lall Sahoo v. Luckmessur Singh (Maharajah)* (1876), 6 I. A. 233, at p. 238; 5 C. L. R. 477, at p. 481; *General Manager of the Raj Durbhunga v. Ramaput Sing (Maharajah Coomar)*, 14 M. I. A. 605; 10 B. L. R. 294; 17 W. R. C. R. 459; *Ishan Chunder Mitter v. Buksh Ali Soudagur* (1863), Marshall, 614; W. R. F. B. R. 199.

⁸ The mere fact that the right, title, and interest of the widow is being sold does not preclude the Court from ascertaining from the judgment or proceedings what was actually sold; *Jugol Kishore v. Jotindro Mohun Tagore (Maharajah)* (1884), 11 I. A. 66; 10 Calc. 985; *General Manager of Raj Durbhunga v. Ramaput Sing (Maharajah Coomar)*

terms of the decree in execution.¹ In order to ascertain what passed by the sale, the Court may look at the judgment,² or the pleadings,³ or the proceedings or decree.⁴

In the case of a sale in execution of a decree made on a mortgage and executed by a widow the question as to whether more than the widow's personal interest passed depends also upon whether there was necessity for the mortgage.⁵

Where property is sold to satisfy several decrees, some of which bind the estate, the Court will not interfere with the possession of the purchaser.⁶

An execution sale in satisfaction of debts contracted by the widow and the next reversioner has not the effect of a sale by her and that reversioner.⁷

In a sale for arrears of Government revenue payable in respect of the share of an estate in the possession of an Hindu female restricted owner, the whole interest passes.⁸

As to a sale for arrears of rent, see *Chowdhry Zuhoorul Huq v. Gooroo Churn Roy* (1871), 15 W. R. C. R. 329; *Raja Ram Banerjee v. Sonatun Roy* (1875), 23 W. R. C. R. 404; *Braja Lal Sen v. Jiban Krishna Roy* (1898), 26 Calc. 285.

(1872), 14 M. I. A. 605; 10 B. L. R. 294; 17 W. R. C. R. 459; and see cases, *ante*, p. 477, note 7.

¹ *Ram Lal Shookool v. Akhoy Charan Mitter* (1903), 7 C. W. N. 619.

² *Jugol Kishore v. Jotindro Mohun Tagore (Maharajah)* (1884), 11 I. A. 66; 10 Calc. 985.

³ *Srinath Das v. Hari Pada Mitter* (1899), 3 C. W. N. 637.

⁴ *Zuhoorul Huq (Chowdhry) v. Gooroo Churn Roy* (1871), 15 W. R. C. R. 329.

⁵ *Bistobehari Sahoy v. Biaznath*

Prasad (Lala) (1871), 7 B. L. R. 213; 16 W. R. C. R. 49.

⁶ *Debendro Narain Roy (Rajah) v. Chundernath Roy (Coomar)* (1873), 26 W. R. C. R. 30.

⁷ *Mohima Chunder Roy Chowdhury v. Gouri Nath Dey Chowdhury* (1897), 2 C. W. N. 162. See *ante*, pp. 468, 469.

⁸ *Debi Das Chowdhury v. Bipro Charan Ghosal* (1895), 22 Calc. 641; *Banalata Dasi v. Monmotha Nath Goswami* (1907), 11 C. W. N. 821; Act XI. of 1859 (Revenue Sale law), s. 54.

Sale for
arrears of
Revenue.

CHAPTER XVI.

REVERSIONERS AND THEIR RIGHTS.

UNTIL the expiration of the estate of the widow or other restricted female heir, *i.e.* on her death (or possibly on her abandoning all interests in worldly affairs¹), it is impossible to ascertain who will succeed to the property. Interest of reversioners.

“The succession does not open to the heirs of the husband until the termination of the widow’s estate. Upon the termination of that estate the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death.”²

During the lifetime of the widow or other limited heir the interest of a reversioner is not vested. It amounts merely to a “*spes successionis*.”³

“None of these reversioners, speaking strictly, can be said individually to possess any certain or tangible interest in the reversion; for the person who will get it is only he who shall actually survive the qualified proprietor and who shall occupy at her death the position of heir to the last full owner, and who that will be it is of course impossible to say.”⁴

A reversioner cannot sue for a mere declaration of his right to succeed.⁵

He has not an interest entitling him to redeem, during the lifetime of the widow, property mortgaged by the widow’s husband.⁶

The interest of the reversioner is incapable of being transferred,⁷ or

¹ *Ante*, p. 345.

² *Moniram Kolita v. Kerry Kolytany* (1880), 7 I. A. 115, at p. 154; 5 Calo. 776, at pp. 789, 790; 6 C. L. R. 322, at pp. 332, 333.

³ *Cases post*, note 7.

⁴ *Chiruvolu Punnamma v. Chiruvolu Perrazu* (1906), 29 Mad. 390, at p. 391.

⁵ *Katham Natchiar v. Dorasinga Tever* (1875), 2 I. A. 169; 15 B. L. R. 83; 23 W. R. C. R. 314. See Specific Relief Act (I. of 1877), s. 42; *Shama Soonduree Chowdhraim v. Jummoona Chowdhraim* (1875), 24 W. R. C. R.

86, explaining *Brinda Dabee Chowdhraim v. Pearee Lall Chowdhry* (1868), 9 W. R. C. R. 460.

⁶ *Ram Chandar v. Kallu* (1908), 30 All. 497; Transfer of Property Act (IV. of 1882), s. 91.

⁷ Transfer of Property Act (IV. of 1882), s. 6 (a); *Muthuveeru Mudaliar v. Vyithilinga Mudaliar* (1908), 32 Mad. 206; *Manickam Pillai v. Ramalinga Pillai* (1905), 29 Mad. 120; *Chiruvolu Punnamma v. Chiruvolu Perrazu* (1906), 29 Mad. 390, at p. 399; *Hargawan Magan v. Baijnath Das* (1909), 32 All. 88; *Jagannath v.*

of being renounced,¹ or of being attached in execution of a decree.² In case of his insolvency it does not vest in the Official Assignee or other assignee in insolvency.³

An agreement to divide the reversion when it should fall in, creates no vested right, but only a right to claim specific performance.⁴

A compromise between the reversioner and the widow acknowledging the right of the widow under a will is within the competence of the reversioners,⁵ but they cannot bind subsequent reversioners by any compromise of their rights.⁶

Where there are several reversioners entitled successively to succeed to an estate held for life by a widow or other restricted owner, no one of such reversioners can be held to claim through or derive his title from another reversioner, even if that other happens to be his father, but each derives his title from the last full owner.⁷

They do not derive their title from the restricted owner.⁸

There is no privity of estate between one reversioner and another as such, and consequently an act or omission by one reversioner, except so far as he can consent to an alienation by the limited female owner,⁹ cannot bind other reversioners, whether or not they happen to be his heirs.¹⁰

Dibbo (1908), 31 All. 53; *Nund Kishore Lal v. Kanee Ram Tewary* (1902), 29 Calc. 355; 6 C. W. N. 395, in which it was held that *Sham Sunder Lall v. Achhan Kunwar* (1898), 25 I. A. 183; 21 All. 71; 2 C. W. N. 729 (S. C. in Court below, *Achhan Kunwar v. Thakur Das* (1895), 17 All. 125), overruled *Brahmadeo Narayan v. Harjan Singh* (1898), 25 Calc. 778. See *Doolichand v. Birj Bhookun Lal Awasti* (1880), 10 C. L. R. 61, at p. 65; 6 C. L. R. 528, at p. 538; *Kanti Chandra Mukerji v. Ali-i-Nabi* (1911), 33 All. 414.

¹ *Dhoorjeti Subbayya v. Dhoorjeti Venkayya* (1906), 30 Mad. 201.

² Code of Civil Procedure (Act V. of 1908), s. 60 (m).

³ *Babu Anaji v. Ratnoji Krishnarav* (1895), 21 Bom. 319. See Insolvency (Presidency towns) Act (III. of 1909), s. 52; Provincial Insolvency Act (III. of 1907), s. 2 (e).

⁴ *Pindripolu Sooraparaju v. Pindripolu Veerabhadradu* (1907), 30 Mad. 486.

⁵ *Olati Pulliah Chetti v. Varadarajulu Chetti* (1908), 31 Mad. 474.

⁶ See *Ram Shankar Lal v. Ganesh Prasad* (1907), 29 All. 451. As to a compromise by reversioners to impartible estates, see *Harpal Singh v. Lekhraj Kunwar* (1908), 30 All. 406, and cases therein cited.

⁷ *Govinda Pillai v. Thayammal* (1904), 28 Mad. 57; *Bhagwanta v. Sukhi* (1899), 22 All. 33; *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Calc. 62, at p. 71; 9 C. W. N. 25, at p. 31; *Shib Shankar Lal v. Soni Ram* (1909), 32 All. 33, at p. 41; *Chhuddu Singh v. Durga Dei* (1900), *ibid.* 382; *ante*, p. 349.

⁸ *Shib Shankar Lal v. Soni Ram* (1909), 32 All. 33, at p. 41.

⁹ *Ante*, pp. 468, 469.

¹⁰ See *Bahadur Singh v. Mohar Singh* (1901), 29 I. A. 1; 24 All. 94; 6 C. W. N. 169; 4 Bom. L. R. 233; *Govinda Pillai v. Thayammal* (1904), 28 Mad. 57. See *post*, p. 485, as to the effect of a declaratory suit by a reversioner.

An alienation by a restricted owner in excess of her powers is voidable by the reversioners. It is not void.¹

Alienation by female owner.

The reversioner may ratify the alienation,² or he may treat it as a nullity.³ It is not necessary for him to sue to set it aside.⁴

Although even an immediate reversioner has no interest higher than a hope of succession,⁵ he or she,⁶ if not barred by estoppel,⁷ limitation,⁸ or otherwise, can sue to restrain a widow, or other restricted owner, or her assignee,⁹ from committing waste,¹⁰ or injuring the property;¹¹ and in the discretion of the Court can obtain a declaration that an alienation,¹² or any unauthorized act which is injurious to the estate or to the reversion, or will be likely to injure the interests of the reversioners, is voidable at their instance,¹³ except during the life of the restricted owner.¹⁴

Suit to restrain waste.

¹ *Bijoy Gopal Mukerji v. Krishna Mahishi Debi (Srimati)* (1907), 34 I. A. 87; 34 Calc. 329; 11 C. W. N. 424; 9 Bom. L. R. 602; *Kishori Pal v. Bhusari Bhūmja (Sheikh)* (1909), 14 C. W. N. 106.

² *Modhu Sudan Singh (Raja) v. Rooke* (1897), 24 I. A. 164; 25 Calc. 1; 1 C. W. N. 433; *Bijoy Gopal Mukerji v. Nil Ratan Mukerji* (1903), 30 Calc. 990; 7 C. W. N. 864; S. C. (on appeal) (1907), 34 I. A. 87; 34 Calc. 329; 11 C. W. N. 424; 9 Bom. L. R. 602; *Hayes v. Harendra Narain* (1904), 31 Calc. 698.

³ *Bijoy Gopal Mukerji v. Krishna Mahishi Debi (Srimati)* (1907), 34 I. A. 87; 34 Calc. 329; 11 C. W. N. 424; 9 Bom. L. R. 602.

⁴ *Harihar Ojha v. Dasarathi Mishra* (1905), 33 Calc. 257; 9 C. W. N. 636.

⁵ *Ante*, p. 479.

⁶ Specific Relief Act (I. of 1877), s. 39, 54, illus. (m); *Golab Koonwer (Must)* v. *Shit Sahai* (1867), 2 Agra, 54; *Gunesb Dutt v. Lall Muttee Koer (Mussumut)* (1871), 17 W. R. C. R. 11.

⁷ *Ante*, p. 471.

⁸ *Post*, p. 483.

⁹ *Gobindmani Dasi v. Shamlal Bysak* (1864), B. L. R. F. B. R. 48; W. R. F. B. R. 165; *Kamavaadhani*

Venkata Subbaiya v. Joysa Narasingappa (1866), 3 Mad. H. C. 116, at p. 119.

¹⁰ See *ante*, pp. 456, 457.

¹¹ *Kathama Natchiar v. Dorasinga Tever* (1875), 2 I. A. 169, at p. 191; 15 B. L. R. 83, at p. 119; 23 W. R. C. R. 314, at p. 322; *Shurut Chunder Sein v. Muthooranath Pudatick* (1867), 7 W. R. C. R. 303.

¹² This includes a division among the female members of a family after a collusive arbitration, *Ram Sarup v. Ram Dei* (1906), 29 All. 239. It includes a mortgage by conditional sale (*Odai Narain Singh v. Dhurm Mahtoon*, W. R. 1864, C. R. 263), or any other form of mortgage. As to a compromise by the restricted owner, see *ante*, pp. 475, 476.

¹³ Specific Relief Act (I. of 1877), s. 42, illus. (e), *Mahomed Shumsool Hooda (Moulvie) v. Shevrukram* (1874), 2 I. A. 7; 14 B. L. R. 226; 22 W. R. C. R. 609; *Isri Dutt Koer v. Hansbutti Koerain (Mussumut)* (1883), 10 I. A. 150; 10 Calc. 324; 13 C. L. R. 418, *Raj Lukhee Dabea v. Gokool Chunder Chowdhry* (1869), 13 M. I. A. 209; 3 B. L. R. P. C. 57; 12 W. R. P. C. 47; *Goolab Sing (Koer) v. Kurun Sing (Rao)* (1871), 14 M. I. A. 176;

For note ¹⁴ see next page.

If the transaction be by a written instrument the Court can order it to be delivered up and cancelled.¹

The reversioner can also, it is submitted, sue to protect the estate from any injury, against the happening of which the limited owner is not taking sufficient precautions.

There must be an injury to the reversion.² Where the widow purports only to convey her own interest there is no ground for interference, but where the act is an injury to the reversioners the Court will interfere.³

"The principle upon which a reversionary heir is allowed to maintain a declaratory suit, although it may turn out in the end that he is not the person who actually gets the property, is that otherwise evidence regarding the true character of the alienation might disappear and be not available when required."⁴

"The plaintiff would indeed have a right to restrain the widow from waste; but his right to do this arises less from the necessity of protecting his own interests than from the function vested by the Hindu law in the next male heir of a person whose estate descends to a female, namely, that of protecting the estate. And it is obvious that, if heirs in expectancy were debarred from suing to protect waste until the succession had actually accrued, the waste would, in most cases, be past remedy, and the estate irretrievably impaired."⁵

10 B. L. R. 1; *Jumoon Dassya Chowdhrahi v. Bamasoonderei Dassya Chowdhrahi* (1876), 3 I. A. 72; 1 Calc. 289; 25 W. R. C. R. 235; *Balbhadra v. Bhawani* (1907), 34 Calc. 853; 11 C. W. N. 956; *Hem Chunder Sanyal v. Sarnamoyi Debi* (1894), 22 Calc. 354; *Chottoo Misser v. Jemah Misser* (1880), 6 Calc. 198; 6 C. L. R. 588; *Adi Deo Narain Singh v. Dukharan Singh* (1883), 5 All. 532; *Upendranarain Myti v. Gopeenath Bera* (1883), 9 Calc. 817; 12 C. L. R. 356; *Gangayya v. Mahalakshmi* (1886), 10 Mad. 90; *Gopichand v. Sujan Kuar* (1886), 8 All. 646; *Gobindmani Dasi v. Shamlal Bysak* (1864), B. L. R. F. B. R. 48; W. R. F. B. R. 165; *Oodoy Chand Jha v. Dhun Monee Debra* (1865), 3 W. R. C. R. 183; *Grose v. Amirtamayyi Dasi* (1869), 4 B. L. R. O. C. 1; 12 W. R. A. O. J. 13; *Shewak Ram Roy v. Mahammed Shamsul Hoda* (1869), 3 B. L. R. A. C. 196; 12 W. R. C. R. 26; *Chuttur Narain (Lalla) v. Wooma Koonwaree (Mussamut)* (1867), 8 W. R. C. R. 273; *Bisobehari Sahoy v. Biainath Prasad (Lala)* (1871), 7 B. L. R. 213; 16

W. R. C. R. 49; *Danoodur Surmah v. Mohee Kant Surmah* (1873), 21 W. R. C. R. 54; *Radha (Mussamut) v. Kour (Mussamut)*, W. R. 1864, C. R. 148.

¹ *Ante*, p. 460.

² Specific Relief Act (I. of 1877), s. 39.

³ See *Sreenarain Mitter v. Kishen Soondory Dassee* (1873), I. A. Sup. Vol. 149; 11 B. L. R. 171; 19 W. R. C. R. 133.

⁴ See *Ram Pershad Chowdry v. Jokhoo Roy* (1884), 10 Calc. 1003.

⁵ Per Mookerjee, J., in *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Calc. 62, at pp. 66, 67; 9 C. W. N. 25, at p. 27; *Chottoo Misser v. Jemah Misser* (1880), 6 Calc. 198; 6 C. L. R. 588; *Chiruvolu Punnamma v. Chiruvolu Perrazu* (1908), 29 Mad. 390, at p. 402. See *Behary Lall Mohurwar v. Madho Lall Shri Gyawal* (1874), 13 B. L. R. 222; 21 W. R. C. R. 430.

⁶ *Pranputtee Koer v. Futeh Bahadur Singh (Lalla)* (1863), 2 Hay, 608, at p. 611; approved of in *Chummun Mohunt v. Rajendur Sahoo* (1867), 7 W. R. C. R. 119.

The granting of a merely declaratory decree¹ or of an injunction² is discretionary. Declaratory decree or injunction.

Where the reversioner sues to have an alienation made by the widow declared to be void except during her life, a strong case of expediency must be shown to justify a Court in refusing declaratory relief.³

In the exercise of its discretion the Court would refuse to make a declaration with regard to a mortgage for a small sum of money which might be paid off by the widow in her lifetime.⁴

In a case where the widow purported to deal with the property by will the Court gave the reversioner a declaratory decree,⁵ but in another case where the arrangement was one only to take effect on the widow's death the Court declined to give a decree.⁶

In a declaratory suit by reversioners during the lifetime of the widow it is premature to raise the question whether the alienees, having spent money upon the property purchased by them from the widow, are entitled to compensation.⁷

As to a suit by a reversioner to set aside an adoption, see *ante*, pp. 158-160.

A suit during the life of a Hindu female by a Hindu, who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation⁸ of such land made by the female declared to be void except for her life or until her marriage, is barred unless it be brought within twelve years from the date of the alienation.⁹ Limitation of suit.

This does not prevent a suit for possession after the death of the widow.¹⁰

¹ Specific Relief Act (I. of 1877), s. 42; *Sreenarain Mitter v. Kishen Soondoree Dassee* (1873), I. A. Sup. Vol. 149; 11 B. L. R. 171; 19 W. R. C. R. 133. The Privy Council is reluctant to overrule the discretion of the lower Courts in granting a declaratory decree under s. 42 of Act I. of 1877; *Jaipal Kunwar (Thakurain) v. Indar Bahadur Singh (Bhaiya)* (1904), 31 I. A. 67; 23 All. 238; 8 C. W. N. 465; 6 Bom. L. R. 495; *Sadut Ali Khan v. Abdool Gunneh (Khajeh)*, I. A. Sup. Vol. 165; 11 B. L. R. 203. As to interference with the discretion of Courts in India, by higher Courts in that country, see *Sant Kumar v. Deo Saran* (1886), 8 All. 365.

² Specific Relief Act (I. of 1877), s. 52.

³ *Isi Dut Koer v. Hansbuth Koe-rain (Mussumut)* (1883), 10 I. A. 150; 10 Calc. 324; 13 C. L. R. 418.

⁴ *Chhotu Mahton v. Sheobarti Koer (Musat)* (1901), 5 C. W. N. 445.

⁵ *Kalhan Singh v. Sanwal Singh* (1884), 7 All. 163.

⁶ *Behary Lall Mohurwar v. Madho Lall Shir Gyawal* (1874), 13 B. L. R. 222; 21 W. R. C. R. 430.

⁷ *Rup Narain v. Gopal Devi (Mus-sammal)* (1909), 36 I. A. 103; 36 Calc. 780; 13 C. W. N. 920; 11 Bom. L. R. 833.

⁸ See *ante*, p. 481, note 12.

⁹ Limitation Acts, IX. of 1908, Sched. I. art. 125; XV. of 1877, Sched. II. art. 125.

¹⁰ *Mesrao (Musat) v. Girjanundan Tewari* (1908), 12 C. W. N. 857; *post*, p. 488.

As to the limitation in suits by subsequent reversioners, see *post*, p. 487.

Reversioners
need not sue.

The reversioner is not obliged to sue during the lifetime of the restricted owner for relief in respect of an alienation or other act.¹ He can wait until the property vests in him, and then sue for possession.

Neglect to get
in property.

When the restricted owner refuses to have any concern with the assets, or when she refuses or neglects to get in the property,² or acquiesces in a wrongful possession,³ the reversioner can sue.⁴

It is submitted that the reversioner can in some cases sue to clear a cloud from the title to the property when the restricted owner declines or omits to sue.⁴

Right to oust
restricted
owner.

The circumstance that there has been a wrongful alienation does not ordinarily entitle the reversioner to oust the restricted owner from possession, unless she has committed some act involving forfeiture of the property.⁵

An attempt at a false adoption of a son does not entail forfeiture or by itself justify the Court in appointing a receiver.⁶

In a case where the waste committed by the limited owner shows that she is quite incapable of managing the property, and only in such case, or where it is necessary to prevent waste or injury to the reversion⁷ or to protect the estate, when she declines to take possession of it,⁸ the Court may deprive her of the control and may appoint a manager or receiver.⁹ It may, if it be for the benefit of the estate, nominate the reversioner to

¹ *Juggendronath Banerjee v. Rajendronath Holdar* (1867), 7 W. R. C. R. 357.

² *Radha Mohan Dhar v. Ram Dass Dey* (1869), 3 B. L. R. A. C. 362; 24 W. R. C. R. 86, note. See *Joy Mooruth Koor v. Buldeo Singh* (1874), 21 W. R. C. R. 444; *Chunder Koomar Gangooly v. Rajkishen Banerjee* (1870), 14 W. R. C. R. 322.

³ *Adi Deo Narain Singh v. Dukharan Singh* (1883), 5 All. 532; *Gunesh Dutt v. Lall Muttee Koor (Mussamat)*, 17 W. R. C. R. 11.

⁴ See, however, *Suraj Bansi Kunwar (Mussamat) v. Mahipat Sing* (1871), 7 B. L. R. 669; 16 W. R. C. R. 18.

⁵ *Haradhun Naug v. Issur Chunder Bose* (1866), 6 W. R. C. R. 222;

Kishnee (Mussamat) v. Khealee Ram (1870), 2 N. W. P. 424; *Jwala Nath v. Kulloo* (1868), 3 Agra, 55; *Shib Koeree (Mussamat) v. Joogun Singh* (1867), 8 W. R. C. R. 155; *Loll Soonder Doss v. Hurry Kishen Doss* (1862), Marsh, 113; 1 Ind. Jur. O. S. 32; 1 Hay, 33.

⁶ *Komal Monee Dossee v. Alhad-monee Dossee* (1864), 1 W. R. C. R. 256.

⁷ *Jwala Nath v. Kulloo* (1868), 3 Agra, 55.

⁸ See *Adi Deo Narain Singh v. Dukharan Singh* (1883), 5 All. 532.

⁹ *Shama Soonduree Chowdhraïn v. Jumoono Chowdhraïn* (1875), 24 W. R. C. R. 86. See *Ex parte Mathuresi Jijai Amba (Rani)* (1890), 13 Mad. 390.

the management,¹ requiring him to pay the income to the widow. A similar course might be adopted where the widow has allowed the property to leave her hands or has neglected to get it in.²

A subsequent reversioner is not bound by a declaratory decree made in a suit brought by the immediate or any other reversioner,³ such as a decree in a suit seeking to declare the widow's alienation invalid.⁴

The Court would probably in its discretion refuse to give a declaratory decree where the matter had been fully discussed in a suit brought by a reversioner who had antecedent rights.

A suit for a declaration as to an alienation, or to restrain waste,⁵ may be brought by a more distant reversioner, if the reversioners nearer in succession are in collusion with the holder of the restricted estate,⁶ or are precluded from suing by consent to the alienation,⁷ waiver,⁸ limitation or otherwise,⁹ or where the immediate reversioner has waived all rights in the reversion,¹⁰ or refuses without sufficient cause to sue.¹¹

¹ *Maharani (Musst) v. Nanda Lal Misser* (1868), 1 B. L. R. A. C. 27; 10 W. R. C. R. 73; *Gunesh Dutt v. Lall Muttee Koer (Mussumut)* (1871), 17 W. R. C. R. 11; *Nundlal Baboo v. Bolakee Bebee*, Ben. S. D. A. 1854, p. 351; *Golukmonee Dassee v. Kishenpersad Kanoongoe*, Ben. S. D. A. 1859, p. 210; *Dinkishen Shatrah v. Gungadhur Mookerjee* (1863), 2 Hay, 582; *Adi Deo Narain Singh v. Dukharan Singh* (1883), 5 All. 532. See *Koroonamoyee Dasee v. Gobindnath Roy*, Ben. S. D. A. 1859, p. 944.

² *Radha Mohan Dhar v. Ram Das Dey* (1869), 3 B. L. R. A. C. 362; 24 W. R. C. R. 86, note.

³ Act I. of 1877 (Specific Relief), s. 43.

⁴ *Chhiddu Singh v. Durga Dei* (1900), 22 All. 382; *Sakyahani Ingle Rao Sahib v. Bhavani Bozi Sahib* (1904), 27 Mad. 588. See *Chiruvolu Punnamma v. Chiruvolu Perrazu* (1906), 29 Mad. 390.

⁵ *Ante*, p. 481.

⁶ See *Naikram Lall v. Soorujbuns Sahee*, Ben. S. D. A. 1859, p. 891.

⁷ *Bakhtawar v. Bhagwana* (1910), 32 All. 176. *Ante*, pp. 468-470.

⁸ *Bhikaji Apaji v. Jagannath Vitthal* (1873), 10 Bom. H. C. 351;

approved of in *Anund Koer (Rani) v. Court of Wards* (1880), 8 I. A. 14, at p. 22; 6 Calc. 764, at p. 772; 8 C. L. R. 381, at p. 385; *Ammur Singh v. Murdun Singh* (1870), 2 N. W. P. 31.

⁹ *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Calc. 62; 9 C. W. N. 25; *Govinda Pillai v. Thayammal* (1904), 28 Mad. 7; *Jhula v. Kanta Prasad* (1887), 9 All. 441; *Madari v. Malki* (1884), 6 All. 428; *Raghunath v. Thakuri* (1881), 4 All. 16; *Gauri Dut v. Gur Sahai* (1878), 2 All. 41; *Dowar Rai v. Boonda (Mussumat)* (1866), N. W. P. R. B. R. 56; *Shama Soonduree Chowdhrair v. Jumoona Chowdhrair* (1875), 24 W. R. C. R. 86; *Retoo Raj Pandey v. Lalljee Pandey* (1875), 24 W. R. C. R. 399; *Bama Soonduree Dossee v. Bama Soonduree Dossie* (1868), 10 W. R. C. R. 301.

¹⁰ *Ammur Singh v. Murdun Singh* (1870), 2 N. W. P. 31. In *Rai Charan Pal v. Pyari Mani Das* (1869), 3 B. L. R. O. C. 70, where the immediate reversioner had assigned his interests to the next reversioner, the Court declined to permit a suit by the assignee.

¹¹ *Jhula v. Kanta Prasad* (1887),

Where the next immediate reversioner will, if she succeeds to the property, be a restricted owner, the Calcutta¹ and Madras² High Courts have held that the reversioner next in succession may sue. This is, it is submitted, the correct view. The Allahabad High Court is not agreed on this subject, one view being that the next reversioner can only so sue in case of collusion or connivance.³

“Their lordships are of opinion that although a suit of this nature⁴ may be brought by a contingent reversionary heir, yet that as a general rule, it must be brought by the presumptive reversionary heir, that is to say, by the person who would succeed if the widow were to die at that moment. They are also of opinion that such a suit may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering. They consider that the rule laid down in *Bhikaji Apaji v. Jagannath Vitthal*⁵ is correct. It cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain a suit of the present nature, for, if so, the right to sue would belong to every one in the line of succession, however remote. The right to sue must, in their lordships’ opinion, be limited. If the nearest reversionary heir refuses without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct, from suing, or has colluded with the widow or concurred in the act alleged to be wrongful, the next presumable heir would be entitled to sue: see *Goolab Singh (Kooer) v. Kurun Sing (Rao)*.⁶ In such a case, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled

9 All. 441; *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Calc. 62; 9 C. W. N. 25.

¹ *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Calc. 62; 9 C. W. N. 25, differing from *Ishwar Narain v. Janki* (1893), 15 All. 132; *Chunder Koomar Hazaree v. Dwarakanath Purdhan*, Ben. S. D. A. 1859, p. 1623, and earlier cases cited in *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Calc. 62, at p. 67; 9 C. W. N. 25, at p. 28; *Bal Gobind Ram v. Hvrusranee* (1865), 2 W. R. C. R. 255; *contra Bama Soonduree Dossee v. Bama Soonduree Dossee* (1868), 10 W. R. C. R. 301, in which the earlier cases were not referred to.

² *Kandasami v. Akkammal* (1889),

13 Mad. 195; *Raghupati v. Tirumalai* (1892), 15 Mad. 422; *Chidambara Reddiar v. Nallammal* (1909), 33 Mad. 410.

³ *Ishwar Narain v. Janki* (1893), 15 All. 132, agreeing with *Madari v. Malki* (1884), 6 All. 428, and differing from *Balgobind v. Ramkumar* (1884), 6 All. 431. See *Radha Kishen v. Bakhtawur Lall* (1866), 1 Agra, 1.

⁴ I.e. to set aside an adoption. The principle will apply to other acts of the widow which injure the interests of the reversion.

⁵ (1873) 10 Bom. H. C. 351; *ante*, p. 485.

⁶ (1871) 14 M. I. A. 176, at p. 193; 10 B. L. R. 1, at p. 8.

to sue, and would probably require the nearer reversioner to be made a party to the suit."¹

Mere delay by a reversioner in instituting a suit to set aside an illegal sale made by a childless Hindu widow, cannot be understood to amount to acquiescence in the sale. The acquiescence which would entitle a more remote reversioner to maintain the suit must be such as would amount to an equitable estoppel, precluding the first reversioner from contesting the validity of the sale made by the widow.²

Although the right of the nearest reversioner to maintain a Limitation. declaratory suit may be barred by the law of limitation, the rights of subsequent reversioners are not thereby barred.³

A subsequent reversioner would be bound to bring his suit within six years from the time when his right to sue occurred.⁴

A minor who is suing to declare an alienation invalid can obtain the advantage of s. 6 of the Limitation Act,⁵ although the right of previous reversioners be barred.⁶

At any rate where the widow or other restricted female owner omits to take proper steps to safeguard the estate, the immediate reversioner,⁷ and apparently where he neglects to do so, or is precluded from doing so, a subsequent reversioner can dispute any act derogatory to his succession, which he could have disputed if the property had been vested in him. Reversioner can dispute acts derogatory to succession.

For instance, he may dispute the will of the last male owner, or an act of a person in whom the property had previously been vested.⁸

It has been held that a person entitled to an estate in reversion expectant on the death of a Hindu widow is entitled to bring a suit for administration of the estate of her husband.⁹

¹ *Anund Koer (Rani) v. Court of Wards* (1880), 8 I. A. 14, at pp. 22, 23; 6 Calc. 764, at pp. 772, 773; 8 C. L. R. 381, at pp. 385, 386.

² *Balgobind v. Ramkumar* (1884), 6 All. 431, at p. 434; *Duleep Singh v. Sree Kishoon Panday* (1872), 4 N. W. P. 83.

³ *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Calc. 62; 9 C. W. N. 25; *contra Jannabai v. Dharsey* (1902), 4 Bom. L. R. 893. See *Mesraw (Musti) v. Girjanundan Tewari* (1908), 12 C. W. N. 857, at p. 859.

⁴ Limitation Acts, IX. of 1908, Sched. I. art. 120; XV. of 1877, Sched. II. art. 120; *Chooramani Dasi v. Baidya Nath Naisk* (1904), 32 Calc. 473.

⁵ Act IX. of 1908; Act XV. of 1877, s. 7.

⁶ *Govinda Pillai v. Thayammal* (1904), 28 Mad. 57. See *Bhagwanta sr. Sukhi* (1899), 22 All. 33; *Abinash Chandra Mazumdar v. Harinath Shaha* (1904), 32 Calc. 62; 9 C. W. N. 25.

⁷ *Rojomoyee Dassee v. Troyluck Mohiney Dassee* (1901), 29 Calc. 260; 6 C. W. N. 267. See *Sant Kumar v. Deo Saran* (1886), 8 All. 365. See, however, *Ishwar Narain v. Janki* (1893), 15 All. 132.

⁸ *Bykunt Nath Roy v. Gria Chunder Mookerjee* (1871), 15 W. R. C. R. 96; *Bheem Ram Chuckerbutty v. Huree Kishore Roy* (1864), 1 W. R. C. R. 359.

⁹ *Rojomoyee Dassee v. Troyluck Mohiney Dassee* (1901), 29 Calc. 260; 6 C. W. N. 267.

Falling in of
reversion.

On the death of the restricted heir, the then next heir of the last full owner is entitled to the property.¹

As to his right to apply for a succession certificate, see *Abinas Chandra Paul v. Probodh Chandra Paul* (1911), 15 C. W. N. 1018.

If the immediate reversioner disclaims, the next subsequent reversioner would be entitled to the property.²

The reversioner who becomes the owner is entitled to dispute all unauthorized acts of the restricted owner.³

He is entitled to recover the property in the state it was at the death of the restricted owner.

He is not liable for any improvements made by an alienee holding under an unauthorized act of the widow.⁴

Limitation.

A suit by a Hindu entitled to the possession of immovable property on the death of a Hindu female,⁵ or by a person to whom, after the death of the female, he has assigned the property, may be brought within twelve years from the death of such female, even though the property has passed into other hands by her alienation, or is held adversely to her.⁶

This applies to a suit brought by a female reversioner⁷ and to a suit

¹ *Ante*, p. 351.

² *Gooshaeen Teekumjee v. Pursotum Lalljee* (1868), 3 Agia, 238; *Ladoonah (Mussumat) v. Sanvaley* (1868), *ibid.* 191.

³ *Ante*, p. 481.

⁴ *Vrijbhukandas Dwarkadas v. Dayaram Jadavji* (1907), 32 Bom. 32.

⁵ Limitation Act IX. of 1908, Sched. I. art. 141; Act XV. of 1877, Sched. II. art. 141; *Runchordas Vandrawandas v. Parvatibhai* (1899), 26 I. A. 71; 23 Bom. 725; 3 C. W. N. 621; 1 Bom. L. R. 607; S. C. in Courts below (1897), 21 Bom. 646; (1889) 14 Bom. 482; *Byjoy Gopal Mukerji v. Krishna Maheshi Debi (Srimati)* (1907), 34 I. A. 87; 34 Calc. 329; 11 C. W. N. 424; 9 Bom. L. R. 602; *Harihar Ojha v. Dasarathi Misra* (1905), 33 Cal. 257; 9 C. W. N. 636; *Rakhmabai v. Keshav Raghunath Bhise* (1906), 31 Bom. 1; *Mukta v. Dada* (1893), 18 Bom. 216; *Cureandas Govindji v.*

Vundravandas Purshotam (1889), 14 Bom. 482, at p. 488; *Mesraw (Musst) v. Girjanundan Tewari* (1908), 12 C. W. N. 857; *Srinath Kur v. Prosunno Kumar Ghose* (1883), 9 Calc. 934; 13 C. L. R. 372; *Pursut Koer v. Palut Roy* (1881), 8 Calc. 442; *Ram Dei Kunwar v. Abu Jafar* (1905), 27 All. 494; *Hanuman Prasad Singh v. Bhagauti Prasad* (1897), 19 All. 357; *Ram Kali v. Kedarnath* (1892), 14 All. 156; *Jhamman Kunwar v. Tiloki* (1903), 25 All. 435, and *Amrit Dhar v. Bindesri Prasad* (1901), 23 All. 448, differing from *Tikaram v. Shama Charan* (1897), 20 All. 42; *Sreeramulu v. Kristamma* (1902), 26 Mad. 143, at p. 147.

⁶ *Gadadhar Roy v. Hari Krishna Sarkar* (1904), 8 C. W. N. 535. This will only apply to an assignment after the death of the widow, *ante*, p. 479.

⁷ *Ram Dei Kunwar v. Abu Jafar* (1905), 27 All. 494.

brought by a person who is entitled to the reversion after the property has been held by two females in succession.¹

The cause of action by a reversioner for possession commences at the death of the widow, whether there has been in name or effect an alienation for her life.²

The right of reversioners after the death of the restricted heir is not affected by possession held adversely to the widow, as their right does not accrue until after her death.³

Where there has been an alleged adoption, which is disputed, the reversioner has the same time within which he can sue for possession.⁴

If the widow held not as a Hindu widow, but under an independent and adverse title, the reversioners are barred by such hostile possession for twelve years.⁵

Adverse possession by widow.

Where there is a dispute on the subject, the fact of the death of the widow must be proved by the reversioners.⁶

In a suit in which an alienation by a restricted female owner is in question, the alienee must either prove the necessity, or that he made *bonâ fide* inquiries as to it, and satisfied himself as a reasonable man as to its existence.⁷ He is not, if he so inquires and acts honestly, affected by the precedent mismanagement of the estate,⁸ or by the fact that the necessity was created

Proof in suit in which alienation is in question.

¹ *Jhamman Kunwar v. Tiloki* (1903), 25 All. 435; *Sambasiva v. Ragava* (1890), 13 Mad. 512. See, however, *Chhaganram Astikram v. Motigavri (Bai)* (1890), 14 Bom. 512.

² *Hanuman Prasad Singh v. Bhagauti Prasad* (1897), 19 All. 357; *Ram Shewuk Roy v. Sheo Gobind Sahoo* (1867), 8 W. R. C. R. 519.

³ See *Ram Kali v. Kedarnath* (1892), 14 All. 156; *Sheoraji v. Ramjas Pandé* (1911), 33 All. 430. As to the old law, see *Nobin Chunder Chuckerbutty v. Guru Persad Doss* (1868), B. L. R. F. B. R. 1008; * 9 W. R. C. R. 505.

⁴ *Bhagwat Pershad v. Murari Lal* (1910), 15 C. W. N. 524.

⁵ *Shamkoer v. Dah Koer* (1902), 29 I. A. 132; 29 Calc. 664; 6 C. W. N. 657; 4 Bom. L. R. 547; *Lachhan Kunwar (Mussummat) v. Anant Singh* (1894), 22 I. A. 25; 22 Calc. 445, as explained in *Jhamman Kuar v. Tiloki* (1903), 25 All. 435, and in *Amrit Dhar v. Bindeeri Prasad* (1901), 23 All. 448; *Mahabir Pershad v. Adhikari Koer* (1896), 23 Calc. 942; *Gajadhar Pande v. Parbati* (1910), 33

All. 312. See *Babu v. Bhikaji* (1889), 14 Bom. 317. See *Ganpatrao Moroji v. Vamanrao Shamrao* (1908), 10 Bom. L. R. 216, where the widow was given an absolute title by arrangement with the reversioners.

⁶ *Walihan (Mussummat) v. Jogeshwar Narayan* (1907), 35 I. A. 38; 35 Calc. 189; 12 C. W. N. 227; 10 Bom. L. R. 9.

⁷ *Dharam Chand Lal v. Bhawani Misra* (1897), 24 I. A. 183; 25 Calc. 189; 1 C. W. N. 697; *Mahe-shwar Baksh Singh v. Ratan Singh* (1896), 23 I. A. 57; 23 Calc. 266; *Byjnath Pershad (Lalla) v. Bissen Beharee Sahoy Singh* (1873), 19 W. R. C. R. 79; *Amarnath Suh (Lala) v. Achan Kuar (Rani)* (1892), 19 I. A. 196; 14 All. 436; *Bhimaraddi v. Bhaskar* (1904), 6 Bom. L. R. 628. See ante, pp. 281, 282. In *Janhavi (Musst)* v. *Balbhadra Suar* (1911), 15 C. W. N. 793, the Court held that mere inquiries from the widow were insufficient.

⁸ *Hunooman Persaud Panday v. Munraj Koonweree (Mussummat Babooee)* (1856), 6 M. I. A. 393; 18 W. R. C. R. note to p. 81 *Mata*

by the action of the widow. If he made such inquiries, he need not see that the money he advances is applied to meet the necessity,¹ nor is he bound to ascertain that the whole money so advanced is actually required therefor.²

The purchaser or mortgagee must in a case of dispute prove that the woman executed the deed with full knowledge of her rights, of all the circumstances, and of the consequences³ and of the nature of the alienation she was making, and that such alienation was justified by necessity, or that he did all that was reasonable to satisfy himself of the existence⁴ and extent⁵ of the necessity.

Purdah-nashin.

Apart from any question of necessity, it is clear that a *purdahnashin* lady is not bound by an alienation unless it be distinctly proved that she was aware of all the circumstances and of the nature and effect of the transaction,⁶ that no advantage was taken of her position, and that she had independent advisers.

The burden is upon the purchaser to aver and prove that she sold the property under such special circumstances as justify a Hindu widow in alienating the immovable property of her husband without the consent of his heirs.⁷

General evidence to the effect that the husband died in debt, and that his widow had substituted new securities at reduced interest for old ones, does not exempt the person upholding the transaction from proving that the particular transaction in question was justified, nor does it throw on the other side the onus of proving the solvency of the husband's estate.⁸

Pershad v. Bhageeruthee (1870), 2 N. W. P. 78; *Sreenath Roy v. Ruttunmalla Chowdhram*, Ben. S. D. A., 1859, p. 421.

¹ *Hunooman Persaud Panday v. Munraj Koonweree* (*Mussumat Babooe*) (1856), 6 M. I. A. 393; 18 W. R. C. R. note to p. 81; *Ghansham Singh v. Badiya Lal* (1902), 24 All. 547; *Ram Pershad Sing v. Nagbungshee Koer* (*Mussamat*) (1868), 9 W. R. C. R. 501.

² *Ghansham Singh v. Badiya Lal* (1902), 24 All. 547.

³ See *Kameswar Persaud (Baboo) v. Run Bahadoor Singh* (1880), 8 I. A. 8; 6 Calc. 843; 8 C. L. R. 361; *Ramratan Sukal v. Nandu* (*Mussumat*) (1891), 19 I. A. 1; 19 Calc. 249; *Sadashiv Bhaskar Joshi v. Dhakubai* (1880), 5 Bom. 450.

⁴ *Bhagwat Dayal Singh (Raja Rai) v. Debi Dayal Sahu* (1908), 35 I. A. 48; 35 Calc. 420; 12 C. W. N. 393.

⁵ *Lalit Panday v. Sridhar Deo Nurayan Sing* (1870), 5 B. L. R. 176.

⁶ See *Sudisht Lal v. Sheobarat*

Koer (*Mussumat*) (1881), 8 I. A. 39; 7 Calc. 245; *Tika Ram v. Deputy Commissioner of Bara Banki* (1899), 26 I. A. 97; 26 Calc. 707; 3 C. W. N. 573; 1 Bom. L. R. 692; *Sham Koer v. Dah Koer* (1902), 29 I. A. 132; 29 Calc. 664; 6 C. W. N. 657; 4 Bom. L. R. 547; *Bhagwat Dayal Singh (Raja Rai) v. Debi Dayal Sahu* (1908), 35 I. A. 48; 35 Calc. 420; 12 C. W. N. 393; 10 Bom. L. R. 230; *Sumsuddin Goolam Husein v. Abdul Husein Kalimuddin* (1906), 31 Bom. 165; *Narbadabai v. Mahadeo Narayan* (1880), 5 Bom. 99, at p. 107; *Achhan Kuar v. Thakur Das* (1895), 17 All. 125, and cases cited in Ameer Ali and Woodroffe's Indian Evidence Act, note to s. 111. As to the attestation of documents executed by *purdahnashins*, see *Sarur Jigar Begum v. Barada Kanta Mitter* (1910), 37 Calc. 526; 14 C. W. N. 974.

⁷ *Gurunath Nilkanth v. Krishnaji Govind* (1880), 4 Bom. 462.

⁸ *Maheshwar Baksh Singh v. Ratan Singh* (1896), 23 I. A. 57; 23 Calc. 266.

Lapse of time does not affect the question of onus of proof, except in so far as it may give rise to a presumption of acquiescence or save the alienee from adverse inferences, arising from the scanty proof which may be offered.¹

Where a portion only of the justifying necessity is proved, and the alienee knew, or might, if he made proper inquiries, have known that a less amount than the amount paid by him was required to meet the necessity, the estate may be charged with the lesser amount,² and may be released on payment thereof,³ or the sale may be set aside on payment of the amount due with interest, mesne profits being set off in case the alienee has had possession.⁴

Where portion
only of
necessity
proved.

It was said in one case: ⁵ "It has been held by the Privy Council in the case of *Deputy Commissioner of Kheri v. Khanjan Singh* ⁶ that where a sale by a widow is partially invalid owing to absence of legal necessity, the whole sale must be set aside, the purchaser accounting for the mesne profits, and the sums expended for legal necessity being set off against them." The Judicial Committee laid down no such general proposition in that case. In another case,⁷ it was said: "It would manifestly be impossible, and possibly prejudicial to the interest of the estate, if the widow were to be held to be bound in every instance to sell property for payment of a debt due from her husband for exactly the sum due to the creditor, and we are of opinion that the Privy Council did not intend to lay down any such rule." On the question as to whether an alienation should be entirely set aside, should not the test be: having regard to the fact that there was some necessity, was the transaction a proper one and for the benefit of the estate? ⁸ Otherwise, if the alienation be set aside altogether, a *bonâ fide* alienee might lose his money and have no security.

There is authority that a suit to set aside a sale, where the necessity

¹ *Ravaneswar Prasad Singh v. Chandî Prasad Singh* (1911), 38 Calc. 721.

² See *Kamikhaprasad Roy v. Jâgâdamba Dasi (Srimati)* (1870), 5 B. L. R. 508; *Gobind Singh v. Baldeo Singh* (1903), 25 All. 330; *Thakurmani Singh v. Dai Rani Koeri* (1906), 33 Calc. 1079; *Deputy Commissioner of Kheri v. Khanjan Singh* (1907), 34 I. A. 72; 29 All. 331; 11 C. W. N. 474; 9 Bom. L. R. 591; *Lalit Panday v. Sridhar Deo Narayan Sing* (1870), 5 B. L. R. 176; 13 W. R. C. R. 457.

³ *Ram Dei Kunwar v. Abu Jafar* (1905), 27 All. 494; *Phool Chund Lall v. Rughoobuns Suhaye* (1868),

9 W. R. C. R. 107, followed in *Suggeram Begum v. Juddoobuns Suhaye* (1868), 9 W. R. C. R. 284.

⁴ See *Deputy Commissioner of Kheri v. Khanjan Singh* (1907), 34 I. A. 72; 29 All. 331; 11 C. W. N. 474; 9 Bom. L. R. 591.

⁵ *Hari Kissen Bhagat v. Bajrang Sahai Singh* (1909), 13 C. W. N. 544, at p. 549.

⁶ (1907) 34 I. A. 72; 29 All. 331; 11 C. W. N. 474; 9 Bom. L. R. 591.

⁷ *Felaram Roy v. Bagalanand Banerjee* (1910), 14 C. W. N. 895, at p. 896.

⁸ See *Phool Chund Lall v. Rughoobuns Suhaye* (1868), 9 W. R. C. R. 107; see ante, p. 468.

for the whole of the purchase money was not proved, cannot be successful unless the plaintiff offers in his plaint to pay the sum due.¹

Equities on
setting aside
alienation.²

Where an alienation is set aside, the reversioner may sometimes be required to pay the amount, to the extent of which the estate has derived benefit.

Where the widow raises money to pay off a mortgage, although she has funds sufficient for the purpose the reversioner is not entitled to set aside the sale except upon the terms of paying off the mortgage.³

Where the widow borrows money for the purpose of increasing her husband's estate by purchase of other property, the reversioners, if claiming the acquisition, must satisfy the debt.³

Where the purchaser has to the knowledge of the reversioner, and without any protest from him,⁴ or if he believed in good faith that he had an absolute title,⁵ laid out sums for the improvement and benefit of the property, the reversioner, on obtaining the reversal of the sale, may be required to compensate the purchaser, but the purchaser cannot claim money spent on repairs, or the right to remove any building which he may have erected.⁶

Pending suits.

On the death of the restricted owner the reversioner takes her place in suits pending by or against her on account of the estate.⁷

Rights of
Crown.

When there are no heirs of the last full owner the Crown, as ultimate heir, can (it is submitted, during the woman's lifetime or thereafter) impeach the unauthorized act of a restricted female owner,⁸ and has, it is submitted, all such other rights as may be possessed by a reversioner.

Except a reversioner or a person who has purchased at an execution sale, which disposed of the whole interest in the property,⁹ no one else is entitled to dispute the acts of a restricted owner.¹⁰

¹ *Singam Setti Sanjivi Kondaya v. Draupadi Bayamma* (1907), 31 Mad. 153; *Mutteeram Kowar v. Gopaul Sahoo* (1873), 11 B. L. R. 416; 20 W. R. C. R. 187. See *Phool Chund Lall v. Rughoobuns Suhaye* (1868), 9 W. R. C. R. 107, at p. 109.

² See *Mahomed Shumsool Hooda (Moulvie) v. Shewukram* (1874), 2 I. A. 7; 14 B. L. R. 226; 22 W. R. C. R. 409; *Sadashiv Bhaskar Joshi v. Dhakubai* (1880), 5 Bom. 450.

³ *Oodey Singh (Kooer) v. Phool Chund* (1873), 5 N. W. P. 197; *Shewak Ram (Rai) v. Bhowani Buksh Singh* (1880), 6 C. L. R. 140.

⁴ See *Dattaji Sakharam Rajadhikar v. Kalba Yese Parabha* (1896), 21 Bom. 749.

⁵ Transfer of Property Act (IV. of 1882), s. 51; *Abhoy Churn Ghose v. Attarmoni Dassee* (1908), 13 C. W. N. 931.

⁶ *Vijbhukan Das v. Dayaram* (1907), 9 Bom. L. R. 1181.

⁷ *Rikhai Rai v. Sheo Pujan Singh* (1910), 33 All. 15; *Premmoyi Choudh-rani v. Preonath Dhur* (1896), 23 Calc. 636. See *Chintamony Dutj v. Mohesh Chundra Banerjee* (1896), 23 Calc. 454.

⁸ *Collector of Masulipatam v. Cavalry Vencata Narrainapah* (1861), 8 M. I. A. 529; 2 W. R. P. C. 61.

⁹ *Rajkishan Sircar v. Jaheeroorul Hug (Chowdhry)*, W. R. 1864, C. R. 351.

¹⁰ See *Brojokishoree Dassee v. Sreenath Bose* (1868), 9 W. R. C. R. 463.

CHAPTER XVII.

INHERITANCE TO PRIVATE IMPARTIBLE PROPERTY.

THE succession to property which is impartible in the sense that it descends to a single heir¹ depends upon custom,² or on the terms of the grant.³ Inheritance to impartible estate.

“The question whether an estate is subject to the ordinary Hindu law of succession, or descends according to the rule of primogeniture, must be decided in each case according to the evidence given in it.”⁴

The acceptance of a *sanad* in the common form under Madras Regulation XXV. of 1802, does not of itself, and apart from other circumstances, avail to alter the succession to an hereditary estate.”⁵

Bengal Regulation XI. of 1793 does not affect the succession of a single heir by special custom.⁶

“When inheritance is impartible it is enjoyed in a different mode from that prescribed by the ordinary Hindu law, but the inheritance is to be traced by the same mode unless Principles of inheritance.

¹ See *ante*, pp. 249–252.

² As to custom, see *ante*, pp. 23–26.

³ See *Venkata Narasimha Appa Row (Rajah) v. Court of Wards*, 7 I. A. 38; 6 C. L. R. 153; *Ramnad Case* (1893), 24 Mad. 613, and cases below, notes 5 and 6.

⁴ *Mahkarjuna (Srimantu Rajah Yarlagadda) v. Durga (Srimantu Rajah Yarlagadda)* (1890), 17 I. A. 134, at p. 144; 13 Mad. 406, at p. 423; *Kachi Kaliyana Rengappa Kalakka Thola Udayar v. Kachi Yuva Rengappa Kalakka Thola Udayar* (1905), 32 I. A. 261, at p. 269; 28 Mad. 508, at p. 515; 10 C. W. N. 95, at p. 106; 7 Bom. L. R. 907.

⁵ *Kachi Kaliyana Rengappa Kalakka Thola Udayar v. Kachi Yuva Rengappa Kalakka Thola Udayar* (1905), 32 I. A. 261, at p. 269; 28 Mad.

508, at p. 515; 10 C. W. N. 95, at p. 106; 7 Bom. L. R. 907; *Mutta Vaduganadha Tevar v. Dorasinga Tevar* (1881), 8 I. A. 99; 3 Mad. 290; *Mahkarjuna (Srimantu Rajah Yarlagadda) v. Durga (Srimantu Rajah Yarlagadda)* (1890), 17 I. A. 134; 13 Mad. 406; *Venkata Narasimha Appa Row (Rajah) v. Court of Wards* (1879), 7 I. A. 38; 6 C. L. R. 153; *Collector of Trichinopoly v. Lekkaman* (1874), 1 I. A. 282; 14 B. L. R. 115.

⁶ *Beer Pertab Sahee (Baboo) v. Rajender Pertab Sahee (Maharajah)* (1867), 12 M. I. A. 1; 9 W. R. P. C. 15; as to a grant by the East India Company in 1771, see *Ram Nundun Singh v. Janki Koer (Maharani)* (1902), 29 I. A. 178; 29 Calc. 828; 7 C. W. N. 57; 4 Bom. L. R. 664.

some further family custom exists beyond the custom of impartibility.”¹

In a case governed by the Mitakshara law the successor to an ancestral impartible estate would ordinarily be a person who would have been a coparcener if the property had been partible.²

There can be no such thing as separation with reference to an impartible Raj.³

“Succession to such estates has always been determined by the rule of survivorship.”⁴

“The rule of succession in impartible estates is based on a theoretical coparcenary and not on any actual unity of interest between the predecessor and his successor, and this theoretical community of interest can be applied only for the purpose of determining the succession and for no other purpose whatever.”⁵

“The first of them (i.e. the first principle) is that a rule of decision in regard to succession to impartible property is to be found in the Mitakshara law applicable to partible property, subject to such modifications as naturally flow from the character of the property as an impartible estate. The second principle is that the only modification which impartibility suggests in regard to the right of succession is the existence of a special rule for the selection of a single heir when there are several heirs of the same class who would be entitled to succeed to the property if it were partible under the general Hindu law. . . . We have first to ascertain the class . . . and we have next to select the single heir applying the special rule. The third principle is that in the absence of a special custom, the rule of primogeniture furnishes a ground of preference. In determining who the single heir is according to these principles, we have first to ascertain the class of heirs who would be entitled to succeed to the

¹ *Muttuvaduganadha Tevar v. Persasami* (1896), 23 I. A. 128, at p. 137; 19 Mad. 451, at p. 457; S. C. in Court below (1892), 16 Mad. 11; *Jogendra Bhupati Hurri Chundun Mahapatra (Raja) v. Nityanund Mansingh* (1890), 17 I. A. 128, at p. 131; 18 Cal. 151, at p. 154; *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 543; 2 W. R. P. C. 31.

² *Jogendra Bhupati Hurri Chundun Mahapatra (Raja) v. Nityanund Mansingh* (1890), 17 I. A. 128, at p. 131; 18 Cal. 151, at p. 154; *Kalikrishna Sarkar v. Raghunath Deb* (1903), 31 Cal. 224; see ante, p. 252, 253.

³ *Laliteswar Singh v. Rameshwar*

Singh (1909), 36 Cal. 481; 13 C. W. N. 838.

⁴ *Gur Pershad Singh v. Dhani Ras* (1910), 38 Cal. 182; 15 C. W. N. 49; *Yanumula Venkayammah (Stree Rajah) v. Yanumula Boochra Vankondora* (1870), 13 M. I. A. 333, at p. 339; 13 W. R. P. C. 21; *Chintamun Singh (Chowdhry) v. Nowlukho Konwari* (1875), 2 I. A. 263; 1 Cal. 163; *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 539; 2 W. R. P. C. 31; *Rup Singh (Rajah) v. Basani (Rani)* (1884), 11 I. A. 149; 7 All. 1; *Indar Sen Singh v. Harpal Singh* (1911), 34 All. 79.

⁵ *Rajah of Kalahasti v. Achigadu* (1905), 30 Mad. 454.

property if it were partible, regard being had to its nature as coparcenary or separate property, and we have next to select the single heir by applying the special rule indicated above." ¹

"The sound rule to lay down with respect to undivided or impartible ancestral property is that all the members of the family who are entitled to unity of possession and community of interest according to the law of partition,² are co-heirs, irrespectively of their degrees of agnate relationship to each other, and that, on the death of one of them leaving a widow and no near *sapindas* in the male line, the family heritage, both partible and impartible, passes to the survivors or survivor to the exclusion of the widow. But when her husband was the last survivor, the widow's position as heir relatively to his other undivided kinsmen, is similar to her position with respect to his divided or self and separately acquired property." ³

Where ancestral impartible property is governed by the law of the "Mitakshara" that law, in the event of the holder dying without male issue, would, if the family be undivided, give the succession to the next collateral male heir in preference to the widow or daughters of the last possessor.⁴

The right of an heir during the lifetime of the holder of the estate is a mere *spes successionis*,⁵ and is therefore inalienable.⁶

In the absence of custom a female cannot inherit an impartible Female. ancestral estate governed by the "Mitakshara," which is not a separate acquisition of the late proprietor, where there are any male members of the family who are qualified to succeed as heirs.⁷

Where the impartible estate is a separate acquisition,⁸ the Separate acquisition. law of the succession to separate acquisitions applies, and a woman can succeed as in the case of partible property.⁹

¹ *Subramanya Pandya Chokka Talavar v. Siva Subramanya Pillai* (1894), 17 Mad. 316, at p. 325; *Parbati Kunwar v. Chandarpal Kunwar (Rani)* (1909), 36 I. A. 125, at p. 136; 31 All. 457; 13 C. W. N. 1073; 11 Bom. L. R. 890.

² *A te*, pp. 219, 220.

³ *Y numula Gavuridevamma Garu (Sri Rajah) v. Yenumala Ramandora Garu (Sri Rajah)* (1870), 6 Mad. H. C. 93; at p. 109. See *Hiranath Koer (Maharani) v. Ramnarayan Sing (Baboo)* (1872), 9 B. L. R. 274; 17 W. R. C. R. 316; *Parbati Kumari Debi (Srimati Rani) v. Jagadish Chunder Dhabal* (1902), 29 I. A. 82; 29 Calc. 483; 6 C. W. N. 490; 4 Bom. L. R. 365; *Kalikrishna Sarkar v. Raghunath Deb* (1903), 31 Calc. 204.

⁴ *Chintamun Singh (Chowdhry) v. Nowluckho Konwari (Mussamut)* (1875), 2 I. A. 263; 1 Calc. 153; 24 W. R. C. R. 255; *Rup Singh (Rajah) v. Baisni (Rani)* (1884), 11 I. A. 149, 7 All. 1.

⁵ *Laliteswar Singh v. Rameswar Singh* (1909), 36 Calc. 481; 13 C. W. N. 838.

⁶ *Ante*, pp. 479, 480.

⁷ *Hiranath Koer (Maharani) v. Ram Narayan Sing (Baboo)* (1872), 9 B. L. R. 274; 17 W. R. C. R. 316.

⁸ As where there is a grant from the Government independently of the family. See *Ram Nundun Singh v. Janki Koer* (1902), 29 I. A. 178; 29 Calc. 828; 7 C. W. N. 57.

⁹ *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 543;

"There is no inconsistency between a custom of impartibility and the right of females to inherit, as may be illustrated by the well-known *Shivagunga* case,¹ and therefore the general law must prevail unless it be proved that the custom extends to the exclusion of females."²

Thus in default of male issue the widow succeeds.³ As to the case where there is more than one widow, see *ante*, p. 371.

As to daughters' sons, see *ante*, p. 374.

Nearest
coparcener of
senior line.

When ancestral impartible property governed by the Mitakshara law passes from one line to another, it devolves, not on the coparcener nearest in blood, but on the nearest coparcener of the senior line.⁴

Primogeni-
ture.

If there be no indication to the contrary, the property descends according to the rule of primogeniture,⁵ i.e. as between persons of the same class the elder would be entitled to succeed.⁶

In some cases another ground of selection and not primogeniture is the governing rule of the family.⁷

As to *Qudh taluqdars*, see *Debi Baksh Singh v. Chandrabhan Singh* (1910), 37 I. A. 168; 32 All. 599; 14 C. W. N. 1010; 12 Bom. L. R. 1015.

Nearness of
blood.

Nearness of blood is no ground of preference under the Mitakshara law amongst members of the same class.

2 W. R. P. C. 31; *Ram Nundun Singh v. Janki Koer (Maharani)* (1902), 29 I. A. 178; 29 Calc. 828; 7 C. W. N. 57.

¹ *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 M. I. A. 543; 2 W. R. P. C. 31.

² *Ram Nundun Singh v. Janki Koer (Maharani)* (1902), 29 I. A. 178, at p. 194; 29 Calc. 828, at p. 852; 7 C. W. N. 57, at p. 73; 4 Bom. L. R. 664.

³ *Periasami v. Periasami* (1878), 5 I. A. 61; 1 Mad. 312; 2 C. L. R. 81; *Doorga Persad Singh (Tekait) v. Doorga Konwari (Tekaitni)* (1878), 5 I. A. 149, at p. 160; 4 Calc. 190, at p. 202; 3 C. L. R. 32, at p. 40.

⁴ *Kachi Kaliyana Rengappa Kalakka Thola Udayar v. Kachi Yuva Rengappa Kalakka Thola Udayar* (1905), 32 I. A. 261; 28 Mad. 508; 10 C. W. N. 95; 7 Bom. L. R. 907, approving of *Naraganti v. Venkatachalapati* (1881), 4 Mad. 250; *Muttuvaduganatha Tevar v. Periasami* (1892),

16 Mad. 11, at p. 16, affirmed on appeal (1896), 23 I. A. 128; 19 Mad. 451. See *Achal Ram v. Udai Partab Addiya Dat Singh* (1883), 11 I. A. 51; 10 Calc. 511; *Narindar Bahadur Singh v. Achal Ram* (1893), 20 I. A. 77; 20 Calc. 649.

⁵ *Ishri Singh (Thakur) v. Baldeo Singh* (1884), 11 I. A. 135, at p. 145; 10 Calc. 792, at p. 805; *Bhawani Ghulam v. Deo Raj Kuari* (1883), 5 All. 542.

⁶ *Subramanya Pandya Chokka Talavar v. Siva Subramanya Pillai* (1894), 17 Mad. 316, at p. 325.

⁷ *Ishri Singh (Thakur) v. Baldeo Singh* (1884), 11 I. A. 135; 10 Calc. 792; *Achal Ram v. Udai Partab Addiya Dat Singh* (1883), 11 I. A. 51; 10 Calc. 511; *Mohesh Chunder Dhal v. Satrugan Dhal* (1902), 29 I. A. 62; 29 Calc. 343; 6 C. W. N. 459; 4 Bom. L. R. 372. As to other customs, see *Nittanund Murdiraj v. Sreekurun Juggernath Bewartah Patnaick* (1865), 3 W. R. C. R. 116.

Thus an elder brother of the half blood would be preferred to a younger brother of the whole blood.¹

In a case governed by the Bengal school of law the heir will ^{Bengal school.} be the eldest member of the class of persons who are nearer of kin to the late owner than any other class.²

Thus a brother of the whole blood would be preferred to an elder brother of the half blood.³

In the absence of a custom that sons take in accordance ^{Sons.} with the seniority of their mothers,⁴ the eldest son of the deceased born of any one of his wives succeeds.⁵

The question of the caste of the mother in the absence of a custom to the contrary⁶ does not apparently make any difference.⁷

On the death of such eldest son after the property has vested in him, the estate would pass in his line.⁸

It seems unsettled whether when an eldest son has died, before the estate has become vested in him, his eldest son takes in preference to his brothers.⁹

An illegitimate son of the father of the deceased may succeed in preference to some remote relation.¹⁰

As to an illegitimate son, see *ante*, p. 369.

As in the case of inheritance to partible property, each male owner becomes a fresh stock of descent.¹¹

¹ *Subramanya Pandya Chokka Talavar v. Siva Subramanya Pillai* (1894), 17 Mad. 316.

² Mayne's "Hindu Law," 7th ed., p. 743.

³ *Nelkisto Deb Burmono v. Bierchunder Thakoor* (1869), 12 M. I. A. 523; 3 B. L. R. P. C. 13; 12 W. R. P. C. 21. See *Subramanya Pandya Chokka Talavar v. Siva Subramanya Pillai* (1894), 17 Mad. 316, at p. 330.

⁴ *Ramasami Kamaya Naik v. Sundaralingasami Kamaya Naik* (1894), 17 Mad. 422; affirmed on appeal, *Sundaralingasami Kamaya Naik v. Ramasami Kamaya Naik* (1899), 26 I. A. 55; 22 Mad. 515; 1 Bom. L. R. 850.

⁵ *Jagdish Bahadur v. Sheo Partab Singh* (1901), 28 I. A. 100; 23 All. 369; 5 C. W. N. 602; 3 Bom. L. R. 298; *Rughonath Singh (Rajah) v. Hurrechur Singh (Rajah)* (1843), 7 Ben. Sel. R. 126 (new edition, 146); *Bhujangrav v. Malojirav* (1868), 5 Bom. H. C. A. C. 161; *Ramalakeshmi Ammal v. Sivananthu Perumal Sethurayar* (1872), 14 M. I. A. 570; 1 A.

Sup. Vol. 1; 12 B. L. R. 396; 17 W. R. C. R. 553; *Pedda Rumappa Nayanvaru v. Bangari Seshamma Nayanvaru* (1880), 8 I. A. 1; 2 Mad. 286; 8 C. L. R. 315; *Radaik Ghuserain v. Budaik Pershad Sing* (1863), Marsh. 644.

⁶ *Bistooprea Patmohadea (Ranee) v. Basodeb Dull Bewartee Patnaik* (1865), 2 W. R. C. R. 232.

⁷ Mayne's "Hindu Law," 7th ed., pp. 733-735.

⁸ Mayne's "Hindu Law," 7th ed., p. 736. This was held to be the custom of the family in *Mohesh Chunder Dhal v. Satrugan Dhal* (1902), 29 I. A. 62; 29 Calc. 343; 6 C. W. N. 459; 4 Bom. L. R. 372.

⁹ See Mayne's "Hindu Law," 7th ed., p. 736.

¹⁰ *Jogendra Bhupati Hurri Chundun Mchapatra (Raja) v. Nityanund Mansingh* (1890), 17 I. A. 128; 18 Calc. 151.

¹¹ *Muttuvaduganadha Tevar v. Periasami* (1896), 23 I. A. 128; 19 Mad. 451.

CHAPTER XVIII.

GIFTS AND WILLS.

THE chief importance of the Hindu law of gifts at the present time arises from the fact that the law of Hindu wills as administered by the Court of British India is founded on the Hindu law of gifts.

Power
gift.

A Hindu can transfer by way of gift any property over which he has power of disposal,¹ or can create a charge upon his property by way of gift.²

As to separate acquisitions, see *ante*, pp. 238, 239.

The fact that he is disqualified by physical defects from inheritance does not prevent him giving away property which belongs to him.³

Donee.

Subject to the rule requiring the beneficiary to be a person in existence at the time of the gift, or of the death of the testator, as the case may be, any person is competent to accept a gift.

For instance there is no prohibition in Hindu law against a gift to an infant,⁴ or to an idiot.⁵

In either case his guardian could accept the gift for him.⁶

A minor donee who accepts property, or for whom property is accepted, burdened by any obligation is not bound by his acceptance; but if after attaining majority, and being aware of the obligation, he retains the property given, he becomes so bound.⁷

Under the Hindu law the legal requisites to constitute a perfect disposition by gift were the giving either orally or in

¹ *Abhachari v. Ramachendrayya* (1863), 1 Mad. H. C. 393.

² *Chetti Chalamanna v. Pandrangi Subbamma* (1883), 7 Mad. 23.

³ *Shamachurn Audhiccaree Byragee v. Roop Doss Byragee* (1866), 6 W. R. C. R. 68.

⁴ Macnaghten's "Hindu Law," Vol. ii. chap. viii. para. 36, pp. 243, 244.

⁵ *Kooldebnarain Shahee (Baboo) v. Wooma Coomaree (Mussamut)* (1863), Marsh. 357; 2 Hay, 370.

⁶ See *Joitaram v. Ramkrishna* (1902), 27 Bom. 31; 4 Bom. L. R. 754.

⁷ Act IV. of 1882 (Transfer of Property), s. 127; *Subramania Ayyar v. Sitha Lakshmi* (1896), 20 Mad. 147.

writing, with the intention to pass the property in the thing given, accompanied by its actual delivery and acceptance in the donor's lifetime.¹

Under the Hindu law there must be such making over of possession to the donee as is possible under the circumstances.² Necessity of making over possession.

Where the land is in the possession of tenants a delivery of the documents of title, or a direction to the tenants to pay their rents to the donee or the receipt of rents by the donee was sufficient.³

Mere registration of a deed was insufficient,⁴ but it has been held that delivery of the deed of gift was sufficient to pass the title.⁵

When the donor has done all he can to complete the gift, the gift cannot be set aside on the ground that the donor was out of possession.⁶

Since the passing of the Indian Contract Act (IX. of 1872), an agreement although without consideration is enforceable as a contract if it be made on account of natural love and affection and be registered under the law for the time being in force for the registration of documents.⁷

Possession can be taken by a guardian on behalf of a minor.⁸

Where the donor is the guardian of the donee, the Court will presume that continued possession of the subject of the gift by the former, is really for the benefit of and in trust for the latter.⁹

Where one of the donees is in actual possession, a declaration by the donor assented to by the donee in possession is sufficient.¹⁰

So far as the necessity for actual delivery is concerned, the law is now to be found in s. 123¹¹ of the Transfer of Property Act (IV. of 1882), which enacted as follows :— Transfer how effected.

¹ *N. Visalatchmi Ammal v. N. Subbu Pillai* (1871), 6 Mad. H. C. 270; Strange's "Hindu Law," I. 159; II. 426.

² *Man Bhari v. Nannidh* (1881), 4 All. 40; *Wannathan v. Keyakadath* (1871), 6 Mad. H. C. 194; *Abaji Gangadhar v. Mukta* (1893), 18 Bom. 688.

³ *Harjivan Anandram v. Naran Haribhai* (1867), 4 Bom. H. C. (A. C. J.) 31; *Bank of Hindustan, &c. v. Ahmedbhai Haribhai* (1868), 5 Bom. H. C. (O. C. J.) 83.

⁴ *Lakshimoni Dasi v. Nityananda Day* (1892), 20 Calc. 464; *Dagai Dabee v. Mothuranath Chattopadhyay* (1883), 9 Calc. 854; 12 C. L. R. 530; *Vasudev Bhat v. Narayan Daji Dantte* (1882), 7 Bom. 131.

⁵ *Balmakund v. Bhugwan Das* (1894), 16 All. 185.

⁶ *Kali Das Mullick v. Kunhya Lal Pundit* (1884), 11 I. A. 218; 1 Calc. 121; *Balmakund v. Bhugwan Das* (1894), 16 All. 185.

⁷ Act IX. of 1872, s. 25.

⁸ See *Joitaram v. Ram Krishna* (1902), 27 Bom. 31.

⁹ *Taro Bibee v. Ghasiram* (1878), 3 C. L. R. 247, relying on *Anundchund Rai v. Kishen Mohun Bunoja* (1805), 1 Ben. Sel. R. 115 (2nd ed., 152). See *Venkatachella Maniyakar v. Thathammal* (1869), 4 Mad. H. C. 406.

¹⁰ *Kushal (Bai) v. Lakhma Mana* (1883), 7 Bom. 452.

¹¹ *Dharmadas Das v. Nistarini Dasi* (1887), 14 Calc. 446; *Rambai (Bai) v. Mani (Bai)* (1898), 23 Bom. 234;

"For the purpose of making a gift of immovable property, transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

"For the purpose of making a gift of movable property, the transfer may be effected by a registered instrument signed as aforesaid or by delivery.

"Such delivery may be made in the same way as goods sold may be delivered."¹

Acceptance of a gift during the lifetime of the owner is still necessary.²

Donations
mortis causæ.

Section 128 has no application to gifts of movable property made in contemplation of death.³

The Hindu law makes no distinction in favour of gifts in contemplation of death, as respects the legal requisites to constitute a perfect disposition by gift.⁴ When all these requisites have been fulfilled there is nothing in Hindu law to prevent effect being given to a gift in contemplation of death.⁵

In one case⁶ where the son of the donor had made over possession to the donee after the death of the donor, the gift was upheld.

Definition.

"A will is the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death."⁷

The conduct of the testator and the surrounding circumstances may sometimes show whether a document was intended to be a present gift or a will.⁸

Founded on
law of gifts.

The Hindu law books do not provide rules as to wills in distinction from gifts *inter vivos*, but the introduction of gifts by will into general use has followed in India, as it has done in

Madhavrao Moreshevar v. Kashibai (1909), 34 Bom. 287; 12 Bom. L. R. 9; *Phul Chand v. Lakku* (1903), 25 All. 358. Cf. *Alabi Koya v. Mussa Koya* (1901), 24 Mad. 513.

¹ As to the delivery of goods sold, see Indian Contract Act (IX. of 1872), ss. 90-94.

² Act IV. of 1882, s. 122.

³ *Ibid.*, s. 129.

⁴ *Ante*, p. 499.

⁵ *N. Visalatchmi Ammal v. N. Subba Pillai* (1871), 6 Mad. H. C.

270. See *Upendra Krishna Deb Bahadur (Kumara) v. Nabin Krishna Bose* (1869), 3 B. L. R. O. C. 113; *S. C. Krishna Deb v. Woopendra Krishna Deb*, 12 W. R. O. C. 4.

⁶ *Bhaskar Purshotam v. Sarasvati* (1892), 17 Bom. 482.

⁷ Indian Succession Act (X. of 1865), s. 3.

⁸ See *Chunder Mohinee Dossee v. Hurroosonduree Dossee* (1865), 3 W. R. C. R. 200; *post*, pp. 502, 503.

other countries, the conveyance of property *inter vivos*,¹ and under the English rule a body of law applicable to wills has grown up from the foundation of the Hindu law of gifts.²

"Even if wills are not universally to be regarded in all respects as gifts to take effect upon death, they are generally so to be regarded as to the property which they can transfer and the persons to whom it can be transferred."³

Limits of analogy.

There is not a complete identity between the law of gifts and that of wills.⁴

The history of the practice of making wills by Hindus is somewhat obscure. It seems to have commenced in Calcutta about the middle of the eighteenth century of the Christian Era. At one time, the right of making a will was denied to Hindus by the Courts, but after considerable fluctuation of opinion the practice was recognized as settled in 1832. Probably the practice arose from the desire of Hindus to enjoy a privilege which was exercised by their Christian and Mahomedan fellow-subjects.

A Hindu who is of sound mind,⁵ and not a minor,⁶ can by gift dispose of all property in which he has an absolute interest, and can by will dispose of all property which he may give away in his lifetime.⁷

Subject of gift or will.

As to the gift of a share by a coparcener in a family governed by the Matakshara law, see *ante*, p. 290. As to gifts of property, subject to rights of maintenance, see *ante*, pp. 80, 81.

¹ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1. A. Sup. Vol. 47, at p. 68; 9 B. L. R. 377, at p. 397; 18 W. R. C. R. 359, at p. 366.

² *Ibid.*

³ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1. A. Sup. Vol. 47, at p. 69; 9 B. L. R. 377, at p. 399; 18 W. R. C. R. 359, at p. 366; *Motivahoo (Bai) v. Maamobai (Bai)* (1897), 24 I. A. 93, at p. 105; 21 Bom. 709, at p. 721; 1 C. W. N. 366, at pp. 368, 369. See *Beer Pertab Sahee (Baboo) v. Rajender Pertab Sahee (Maharajah)* (1867), 12 M. J. A. 1, at p. 38; 9 W. R. P. C. 15, at p. 22.

⁴ See *Bishen Chand (Rai) v. Asmaida Koer (Musumat)* (1884), 11 I. A. 164, at p. 177; 6 All. 560, at p. 572; *Lakshman Dada Naik v. Ramchandra Dada Naik* (1880), 7 I. A. 181, at p. 194; 5 Bom. 48, at pp. 61, 62; 7 C. L. R. 320, at p. 328; *Lakshimbai v. Ganpat Moroba*

(1867), 4 Bom. H. C. O. C. 150, at p. 158; *Seth Mulchand Badharsha v. Mancha (Bai)* (1883), 7 Bom. 491, at p. 493.

⁵ See Indian Succession Act (X. of 1865), s. 46, applied to certain Hindu wills (*post*, p. 516) by the Hindu Wills Act (XXI. of 1870), s. 2; *Woomesh Chunder Biswas v. Rashmohini Dass* (1893), 21 Calc. 279, at p. 291; S. C. affirmed on appeal, *Rashmohini Dasi v. Umesh Chunder Biswas* (1898), 25 I. A. 109; 25 Calc. 824; 2 C. W. N. 321.

⁶ Indian Succession Act (X. of 1865), s. 46, applied to certain Hindu wills (*post*, p. 516) by the Hindu Wills Act (XXI. of 1870), s. 2; *Hardwari Lal v. Gomi* (1911), 33 All. 525; W. Macnaghten's "Hindu Law," vol. ii p. 219, note; *Cossinaut Bysack v. Hurrosoondery Dossee* (1819), F. Macnaghten, 81; 2 Morley's "Digest," 198.

⁷ See Hindu Wills Act (XXI. of 1870), s. 3, *post*, p. 513.

"Decided cases, too numerous to be now questioned, have determined that the testamentary power exists, and may be exercised, at least within the limits which the law prescribes to alienation by gift *inter vivos*." ¹

The owner of an impartible estate can dispose of it by will, unless there be a special family custom, or a tenure prohibiting alienation.²

A Hindu woman can dispose of her *stridhan* property by will,³ subject in some cases to the consent of her husband.⁴

As to the power to transfer her *stridhan* property by gift, see *ante*, pp. 428, 429.

She cannot by will dispose of the income or accumulations of an estate, in which she is only a restricted owner, although she may have a power of disposing of them during her lifetime.⁵

Form of will.

In cases not governed by the Hindu Wills Act ⁶ the form of document, provided it be of a testamentary character, is immaterial. No formalities are necessary.⁷ A nuncupative will is permissible.⁸

The following have been held to be of a testamentary nature :—

1. A statement before a Revenue official, which was recorded by him.⁹
2. An unsigned will.¹⁰
3. A draft will.¹¹
4. A petition to the Revenue authorities.¹²

¹ *Beer Pertab Sahee (Baboo) v. Rajender Pertab Sahee (Maharajah)* (1867), 12 M. I. A. 1, at p. 38; 9 W. R. P. C. 15, at p. 22; *Adjoodhia Gir v. Kashee Gir* (1872), 4 N. W. P. 31; *Pitum Koonwar (Must) v. Joy Kishen Doss* (1866), 6 W. R. C. R. 101; *Vallinayagam Pillai v. Pachche* (1863), 1 Mad. H. C. 326.

² *Venkata Surya Mahipati Rama Krishna Rao Bahadoor (Sri Raja Rao) v. Court of Wards* (1898), 26 I. A. 83; 22 Mad. 383; 3 C. W. N. 415; 1 Bom. L. R. 277; *Sartaj Kuari (Rani) v. Deoraj Kuari (Rani)* (1888), 15 I. A. 51; 10 All. 272; *Beresford v. Ramasubba* (1889), 13 Mad. 197.

³ *Ante*, pp. 428, 429.

⁴ *Ante*, p. 428.

⁵ *Ante*, pp. 458, 459.

⁶ *Post*, pp. 514, 515.

⁷ *Bapuji Jagannath* (1895), 20 Bom. 674; *Radhabai v. Ganesh Tatya Gholap* (1878), 3 Bom. 7, following *Muncherji Pestonjee v. Narayen Luxamonjee* (1863), 1 Bom. H. C.

-77; *Vinayak Narayan Joy v. Govindrav Chintaman Jog* (1869), 6 Bom. H. C. A. C. 224.

⁸ *Gokul Chand v. Mangal Sen* (1903), 25 All. 313; *Har Chintaman Dikshit v. Moro Lahskman* (1886), 11 Bom. 89; *Bhagvan Dullabh v. Kala Shankar* (1877), 1 Bom. 641; *Srinivasammal v. Vijayammal* (1864), 2 Mad. H. C. 37.

⁹ *Kalian Singh v. Sanwal Singh* (1884), 7 All. 163.

¹⁰ *Tarachund Bose v. Nobeon Chunder Mitter* (1865), 3 W. R. C. R. 138.

¹¹ *Janki v. Kallu Mal* (1908), 31 All. 236.

¹² *Mahomed Shumsool Hooda (Moulvie) v. Shewukram* (1874), 2 I. A. 7; 14 B. L. R. 226; 22 W. R. C. R. 409; *Kollany Koer (Mussamut) v. Luchmee Pershad* (1875), 24 W. R. C. R. 395. See also *Hurpurshad v. Sheo Dyal* (1876), 3 I. A. 259; 26 W. R. C. R. 55, which was a case under the Oudh Estates Act (I. of 1869).

5. Entries in a *wajib-ul-arz*.¹
 6. A matrimonial arrangement deed.²
 7. A *mooktarmah* (power of attorney).³
 8. A deed of settlement made at the time of an adoption.⁴
 9. A deed of assignment.⁵
- One of the tests is whether the document is revocable or not.⁶

There are no technical rules for the construction of Hindu wills.⁷ Construction of wills.

"The true mode of construing a will is to consider it as expressing in all its parts, whether consistent with law or not, the intention of the testator, and to determine upon a reading of the whole will together⁸ whether, assuming the limitations therein mentioned to take effect,⁹ an interest claimed under it was intended under the circumstances to be conferred."¹⁰ First consider intention, then apply law.

The will is to be construed in its plain ordinary meaning.¹¹

"A benignant construction is to be used and . . . if the real meaning of the document can be reasonably ascertained from the language used, though that language be ungrammatical or untechnical, or mistaken as Benignant construction.

¹ *Mathura Das v. Bhikhan Mal* (1896), 19 All. 16. See *Lali (Musammat) v. Murli Dhar* (1906), 23 I. A. 97; 28 All. 488; 10 C. W. N. 730; *Sahodra v. Genesh Parshad* (1905), 10 C. W. N. 249.

² *Din Tarini Debi v. Krishna Gopal Bagchi* (1908), 36 Calc. 149; 13 C. W. N. 291.

³ *Kollany Koer (Musammat) v. Luchmee Pershad* (1875), 24 W. R. C. R. 395; *Kooldeb Narain Shahee (Baboo) v. Woomacoomaree (Musammat)* (1863), Marshall, 357; 2 Hay, 370.

⁴ *Lakshmi v. Subramanya* (1889), 12 Mad. 490.

⁵ *Ishri Singh (Thakur) v. Baldeo Singh* (1884), 11 I. A. 135; 10 Calc. 792; *Udai Raj Singh v. Bhagwan Bakhsh Singh* (1910), 37 I. A. 46; 32 All. 227; 14 C. W. N. 641; 12 Bom. L. R. 409.

⁶ *Sita Koer (Musst) v. Deo Nath Sahay (Munshi)* (1904), 8 C. W. N. 614.

⁷ Technical rules of English conveyancing are not to be made use of in construing Hindu wills, *Jogeswar Narain Deo v. Ram Chund Dutt* (1896), 23 I. A. 37, at p. 49; 23 Calc. 670, at p. 679.

⁸ Indian Succession Act (X. of

1865), s. 69, applied to certain Hindu wills by the Hindu Wills Act (XXI. of 1870), s. 2, *post*, p. 516; *Amurthayyan v. Kethuramayyan* (1890), 14 Mad. 65, at p. 69. An invalid gift over may indicate the testator's intention to limit an estate which he has created; *Anandrao Vinayak v. Administrator General of Bombay* (1895), 20 Bom. 450.

⁹ What is intended to be a life estate cannot be extended into a greater estate by the failure of the limitations, *Tarakeswar Roy (Kumar) v. Shoshi Shikareswar (Kumar)* (1883), 10 I. A. 51; 9 Calc. 952; 13 C. L. R. 62.

¹⁰ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), I. A. Sup. Vol. 47, at p. 79; 9 B. L. R. 377, at p. 409; 18 W. R. C. R. 359, at p. 371; *Sookhmoy Chunder Dass v. Monohurri Dasi (Srimati)* (1885), 12 I. A. 103, at p. 110; 11 Calc. 684, at p. 692.

¹¹ *Bhagbutti Dase (Musummat) v. Bholanath Thakoor (Chowdry)* (1875), 2 I. A. 256, at pp. 259, 261; 24 W. R. C. R. 168, at p. 169; *Kristoromoney Dossee (Sreemutty) v. Norendro Krishna Bahadoor (Maharajah)* (1888), 16 I. A. 29, at p. 41; 16 Calc. 383, at p. 394.

to name or description, or in any other manner incorrect, provided it sufficiently indicates what was meant, that meaning shall be enforced to the extent and in the form which the law allows." ¹

Surrounding
circum-
stances.

In construing a will the Court must have regard to the words used, and then may take into consideration the surrounding circumstances,² the law relative to the subject,³ and where there is ambiguity ⁴ the ordinary notions and wishes of Hindus.⁵

It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family, and it may be assumed that a Hindu knows that as a general rule, at all events, women do not take absolute estates of inheritance, which they are enabled to alienate.⁶

The principle of joint tenancy appears to be unknown to Hindu law, except in the case of coparcenary between members of an undivided family.⁷

Literal
construction.

"Where the language of the will is clear and consistent, it shall receive its literal construction unless there is something in the will itself to suggest departure from it."⁸

"Clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention."⁹

Technical
words

"Technical words or words of known legal import must have their legal effect, even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense."¹⁰

¹ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Sup. Vol. 47, at p. 65; 9 B. L. R. 377, at p. 395; 18 W. R. C. R. 359, at p. 364.

² *Soorjeemoney Dossee (Sreemutty) v. Denobundhoo Mullick* (1857), 6 M. I. A. 526, at p. 550; 4 W. R. P. C. 114; *Bhuggobutty Prosonno Sen v. Gooroo Prosonno Sen* (1897), 25 Calc. 112, at p. 124.

³ *Bissonauth Chunder v. Bamasoondery Dossee (Sreemutty)* (1867), 12 M. I. A. 41, at p. 59; *S. C. Prankisto Chunder v. Bamasoondery Dossee*, 9 W. R. P. C. 1; *Karsandas Natha v. Ladkavahu* (1887), 12 Bom. 185, at p. 200; *Lakshmi Bai v. Hirabai* (1886), 11 Bom. 69, at p. 74; *Motilal Mithalal v. Advocate General of Bombay* (1910), 35 Bom. 279; 13 Bom. L. R. 471.

⁴ *Parami v. Mahadevi* (1909), 34 Bom. 278; 12 Bom. L. R. 196.

⁵ See *Radha Prosad Mullick v. Ranmoni Dasri* (1908), 35 I. A. 118, at p. 129; 35 Calc. 896 at p. 902;

12 C. W. N. 729, at p. 737; 10 Bom. L. R. 604; *Mahomed Shumsool Hooda (Moulvie) v. Shewukram* (1874), 2 I. A. 7, at pp. 14, 15; 14 B. L. R. 226, at pp. 231, 232; 22 W. R. C. R. 409, at p. 410.

⁶ *Mahomed Shumsool Hooda (Moulvie) v. Shewukram* (1874), 2 I. A. 7, at pp. 14, 15; 14 B. L. R. 226, at pp. 231, 232; 22 W. R. C. R. 409, at p. 410; see ante, pp. 426-428.

⁷ *Jogeswar Narain Deo v. Ram Chund Dutt* (1896), 23 I. A. 37, at p. 44; 23 Calc. 870, at p. 679; *Gopi v. Jaldhara (Musammat)* (1910), 32 All. 41; ante, p. 231.

⁸ *Gurusami Pillai v. Sivakami Ammal* (1895), 22 I. A. 119, at p. 128; 18 Mad. 347, at p. 358. See *Krishnarao Ramchandra v. Benabai* (1895), 20 Bom. 571.

⁹ *Lalit Mohun Singh Roy v. Chukun Lall Roy* (1897), 24 I. A. 76, at p. 85; 24 Calc. 834, at p. 846; 1 C. W. N. 387, at p. 388.

¹⁰ *Ibid.*

By giving his property by will to some other person,¹ a Disinherison. Hindu can defeat the rights of his heirs.²

He can defeat the inheritance of a son whom he has taken in adoption,³ or of a son taken in adoption subsequently to the will.⁴

He cannot by will defeat the legal right of his wife or any other person Right of maintenance. to maintenance;⁵ but he can by will deprive his wife of the share which she gets on partition,⁶ and, provided he leaves sufficient property for the maintenance of his widow and those whom he is legally bound to support, a Hindu can dispose of his property by gift or will, so as to free it from claims to maintenance.⁷

The leading case in the subject of Hindu gifts and wills is Tagore case. the well-known *Tagore* case,⁸ which laid down principles which have been the foundation of most other decisions on the subject of Hindu gifts, settlements, and wills.

The following principles are to be found in the decision in that case, and in the decisions founded thereon.

I. Where property is given or bequeathed to any person, he Presumption that whole interest is entitled to the whole interest of the testator therein, unless

¹ *Prosunno Coomar Ghose v. Tarrucknath Sircar* (1873), 10 B. L. R. 267; *S. C. Tarucknath Sircar v. Prosono Coomar Ghose*, 19 W. R. C. R. 48.

² *Mulraz Lachmia v. Chalekany Vencata Rama Jaggunadha Row* (1838), 2 M. I. A. 54; *Buwa Misser v. Bishen Prokash Narain Singh* (1868), 10 W. R. C. R. 287; *Narayanavams Chetti v. Arunachala Chetti* (1832), 1 Mad. H. C. 487; *Subbayya v. Surayya* (1887), 10 Mad. 251; *Narottam Jagjivan v. Narsandas Harkisandas* (1866), 3 Bom. H. C. A. C. 6.

³ *Purshotam Shama Shenvi v. Vasudev Krishnu Shenvi* (1871), 8 Bom. H. C. O. C. 196; *Lakshmi v. Subramanya* (1889), 12 Mad. 490.

⁴ *Vinayak Narayan Jog v. Govindrav Chintaman Jog* (1869), 6 Bom. H. C. A. C. 224. In this case the natural father was at the time of the adoption aware of the provisions of the will.

⁵ *Promotha Nath Roy v. Nagen-drabala Chaudhrain* (1908), 12 C. W. N. 808; see *ante*, pp. 80, 81.

⁶ *Poorndia Nath Sen v. Heman-gini Dasi* (1908), 36 Calc. 75; see *ante*, p. 319.

⁷ *Debendru Coomar Roy Chowdhry v. Brojendra Coomar Roy Chowdhry* (1890), 17 Calc. 886; *Bhoobunmoyee Debea Chowdhraïn v. Ramkrissore Acharj Chowdhry*, Ben. S. D. A. 1860, p. 485, at p. 489; *Sorolah Dossee v. Bhoobun Mohun Neoghy* (1888), 15 Calc. 292, at p. 306. See *Razabai v. Sadu* (1871), 8 Bom. H. C. A. C. 98; *Lakshmi v. Subramanya* (1889), 12 Mad. 490, at p. 494; answers of law officers in *Mulraz Lachmia v. Chalekany Vencata Rama Jaganadha Row* (1838), 2 M. I. A. 54, at p. 57. The widow's claim to maintenance cannot be defeated merely by implication, *Joytara v. Ramhari Sirdar* (1864), 10 Calc. 638; *Comulmony Dossee v. Rammannath Bysack* (1843), 1 Fulton, 189, at p. 193.

⁸ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), I. A. Sup. Vol. 47; 9 B. L. R. 377; 18 W. R. C. R. 359.

it appears from the will that only a restricted interest was intended for him.¹

"If an estate were given to a man simply without express words of inheritance, it would, in the absence of a conflicting context, carry by Hindu law . . . an estate of inheritance. If there were added to such gift an imperfect description of it as a gift of inheritance, not excluding the inheritance imposed by the law, an estate of inheritance would pass."²

In spite of an apparent absolute interest it may be shown by other provisions of the will or gift that a life interest only was intended to be given.³

As to bequests by husbands to their wives, see *ante*, pp. 426-428.

Attempt to
alter law of
inheritance.

II. "All estates of inheritance created by gift, arrangement, or will, so far as they are inconsistent with the general law of inheritance, are void as such."

"A man cannot create a new form of estate, or alter the line of succession allowed by law, for the purpose of carrying out his own wishes or views of policy."⁴ This rule does not prevent the validity of a life estate, which precedes an invalid provision for the succession.⁵

¹ Indian Succession Act (X. of 1865), s. 82, applied to certain Hindu wills by the Hindu Wills Act (XXI. of 1870), s. 2; *Damoderdas Tapidas v. Dayabhai Tapidas* (1898), 25 I. A. 126; 22 Bom. 833; 2 C. W. N. 417. This principle is equally applicable to the cases of Hindu wills, not governed by the Hindu Wills Act, see cases in next note.

² *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), I. A. Sup. Vol. 47, at p. 65; 9 B. L. R. 377, at p. 395; 18 W. R. C. R. 359, at p. 365; *Lalit Mohun Singh Roy v. Chukkun Lal Roy* (1897), 24 I. A. 76, at p. 88; 24 Calc. 834, at p. 849; ¹ C. W. N. 387, at p. 390; *Manikya-mala Bose v. Nanda Kumar Bose* (1906), 33 Calc. 1306; 11 C. W. N. 12. See *Anundomohey Dossee v. Doeden East India Company* (1859), 8 M. I. A. 43; 4 W. R. P. C. 51; *Basanta Kumari Debi v. Kamikshya Kumari Debi* (1905), 32 I. A. 181; 33 Calc. 23; 10 C. W. N. 1.

³ *Somasundara Mudaliar v. Ganga Bissen Soni* (1904), 28 Mad. 386.

⁴ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), I. A. Sup. Vol. 47, at p. 65; 9 B. L. R. 377, at pp. 394, 395; 18 W. R. C. R. 359, at

p. 364 (in that case an attempt was made to create an estate in tail male); *Tarakeswar Roy (Kumar) v. Shoshi Shikareswar (Kumar)* (1883), 10 I. A. 51; 9 Calc. 952; 13 C. L. R. 62; *Kristoromoney Dossee (Sreemutty) v. Narendro Krishna Bahadur (Maharajah)* (1888), 16 I. A. 29; 16 Calc. 383; *Vullabhdas Damodhar v. Thucker Gordhandas Damodhar* (1890), 14 Bom. 360; *Purna Sashi Bhattacharji v. Kalidhan Rai Chowdhuri* (1911), 38 I. A. 112; 38 Calc. 603; 15 C. W. N. 693; 13 Bom. L. R. 451 (a case of a settlement *inter vivos*), and other cases cited in Phillips' and Travelyan's "Hindu Wills," chap. v.; *Kunhamina (Mooriyat Peetikayil) v. Kunhambi (Mooriyat Peetikayil)* (1908), 32 Mad. 315.

⁵ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), I. A. Sup. Vol. 47, at p. 65; 9 B. L. R. 377, at pp. 394, 395; 18 W. R. C. R. 359, at p. 364; *Rameshwar Prosad Singh v. Lachmi Prosad Singh* (1903), 7 C. W. N. 688. Cf. Indian Succession Act (X. of 1865), s. 103, applied to certain Hindu wills by the Hindu Wills Act (XXI. of 1870), s. 2 (*post*, p. 516).

III. Where an absolute estate is given by the gift or will, a condition repugnant to the estate previously given, or a restriction in the mode of enjoyment, is void.¹

This applies also to a partition or other arrangement or transfer.²

A prohibition against alienation³ (even in the case of a gift to Brahmins),⁴ against obtaining possession,⁵ or against partition,⁶ or a provision that the property should not be liable for the debts of the beneficiary,⁷ a provision that the expenditure is to be controlled by certain trustees,⁸ or a provision that the income is to be accumulated,⁹ may be disregarded by the beneficiary.

A lawful condition not inconsistent with the gift or bequest is valid;¹⁰ but a gift or bequest upon a condition which is impossible,¹¹ or is contrary to law or morality,¹² is void.

IV. A person capable of taking under will, gift, or

Bequest to unborn person.

¹ See Indian Succession Act (X. of 1865), s. 125, and cases in notes 3-9 below.

² *Venkatramanna v. Bramanna Sas-trulu* (1869), 4 Mad. H. C. 345; *Ali Hasan v. Dhirja* (1882), 4 All. 518 (a mortgage); *Bhuuro v. Parmeshri Dayal* (1884), 7 All. 516 (deed of compromise).

³ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Sup. Vol. 47, at p. 65; 9 B. L. R. 377, at p. 395; 18 W. R. C. R. 359, at p. 365; *Ashutosh Dutt v. Doorga Churn Chatterjee* (1879), 6 I. A. 182; 5 Cal. 438; 5 C. L. R. 296; *Sookhmoy Chunder Dass v. Monohurri Dasi (Srimati)* (1885), 12 I. A. 103; 11 Cal. 684; *Raikishori Dasi v. Deben-dranath Sircar* (1887), 15 I. A. 37; 15 Cal. 409; *Chundi Churn Barua v. Sidheswari Debi (Rani)* (1888), 15 I. A. 149; 16 Cal. 71; *Lalit Mohun Singh Roy v. Chukkun Lal Roy* (1897), 24 I. A. 76; 24 Cal. 634; 1 C. W. N. 387.

⁴ *Anantha Tirtha Chariar v. Naga-muthu Ambalagaren* (1881), 4 Mad. 200.

⁵ *Cally Nath Naugh Chowdhry v. Chunder Nath Naugh Chowdhry* (1882), 8 Cal. 378; 10 C. L. R. 207; *Shivgar Dayagar (Gosavi) v. Rivetti-Carnac* (1888), 13 Bom. 463.

⁶ *Mokoondo Lall Shaw v. Gonesh Chunder Shaw* (1875), 1 Cal. 104;

Raikishori Dasi v. Deben-dranath Sircar (1887), 15 I. A. 37; 15 Cal. 409; *Narayan v. Kannan* (1884), 7 Mad. 315.

⁷ *Raikishori Dasi v. Deben-dranath Sircar* (1887), 15 I. A. 37; 15 Cal. 409.

⁸ *Motivahu (Bai) v. Mamubai (Bai)* (1895), 19 Bom. 647.

⁹ *Kolla Subramaniam Chetti v. Thellanayakulu Subramaniam Chetti* (1881), 4 Mad. 124. See *Ranchemoney Dossee (Sreemutty) v. Premmoney Dossee (Sreemutty)* (1905), 9 C. W. N. 1033; *post*, pp. 512, 513.

¹⁰ See *Hureehur Mookerjee v. Raj Kishen Mookerjee* (1874), 23 W. R. C. R. 236; *Ganendro Mohun Tagore v. Juttendro Mohun Tagore (Rajah)* (1874), 1 I. A. 387; 14 B. L. R. 60; 22 W. R. C. R. 377; *Bhoba Tarini Debya v. Peary Lall Sanyal* (1897), 24 Cal. 646; 1 C. W. N. 578. See Part XVI. of Indian Succession Act (X. of 1865) applied to certain Hindu wills (*post*, p. 516).

¹¹ See Indian Succession Act (X. of 1865), s. 115, applied to certain Hindu wills by s. 2 (*post*, p. 516) of the Hindu Wills Act (XXI. of 1870).

¹² See *Ibid.*, s. 114. Where immoral conditions are subsequent to the gift, they are void and the gift is good, see *Ram Narup v. Bela (Mussumat)* (1883), 11 I. A. 44; 6 All. 313.

settlement must, either in fact or in contemplation of law,¹ be in existence at the death of the testator,² or date of the gift,³ as the case may be.

¶

As to grants of impartible estates by Government, see *ante*, pp. 250, 251.

In laying down the above rule in the *Tagore* case the Judicial Committee desired "not to express any opinion as to certain exceptional cases of provisions by means of contract or of conditional gift on marriage or other family provision for which authority may be found in Hindu law or usage."

This rule is applicable to all wills of Hindus, by whatever school they may be governed,⁴ and whether they be or be not subject to the Hindu Wills Act.⁵

It applies whether the bequest is to take effect immediately on the death of the testator, or is to be postponed by the intervention of a prior estate, or is contingent upon the happening of some event.⁶ It applies to a person taking under a power of appointment contained in a will,⁷ and indeed to every form of bequest.⁸

A bequest to the future wife of the testator's son in case he should marry within ten years from the testator's death has been upheld on the ground that the wife was in fact born before the death of the testator.⁹

¹ As in the case of a child in the womb or of an adopted son.

² *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Sup. Vol. 47, at pp. 67, 70; 9 B. L. R. 377, at pp. 397, 400; 18 W. R. C. R. 359, at pp. 366, 367; *Venkata Narasimha Appa Rao Bahadur Sri Raja v. Venkata Purashothama Jaganadha Gopala Row Bahadur (Sri Raja Suraneni)* (1908), 31 Mad. 310.

³ *Purmanund Singh Bahadur (Raja) v. Hayes* (1901), 28 I. A. 152; 28 Calc. 72; 5 C. W. N. 806; 3 Bom. L. R. 803 (a case of a pottah given in settlement of litigation).

⁴ *Mangaldas Nathubhoy (Sir) v. Krishnabai* (1881), 6 Bom. 38.

⁵ *Alangamonjori Dabee v. Sonamoni Dabee* (1882), 8 Calc. 637; 10 C. L. R. 459. See *Cally Nath Naugh Chowdhry v. Chunder Nath Naugh Chowdhry* (1882), 8 Calc. 378, at p. 390; 10 C. L. R. 207, at p. 215; *Jairam Narronji v. Kuverbai* (1885), 9 Bom. 491, at p. 506.

⁶ *Tarakeswar Roy (Kumar) v. Shoshik Shikareswar (Kumar)*, 10 I. A. 51; 9 Calc. 952; 13 C. L. R. 62; *Chundi Churn Barua v. Sidheswari Debi (Rani)* (1888), 15 I. A. 149; 16 Calc. 71; *Kristoromoney Dossee*

(Sreemutty) v. Norendro Krishna Bahadur (Maharajah) (1888), 16 I. A. 29; 16 Calc. 383; *Nistarini Dassi v. Nundo Lal Bose* (1902), 30 Calc. 369, at p. 385; 7 C. W. N. 353, at p. 364; *Javerbai v. Kablibai* (1891), 16 Bom. 492; *Anandrao Vinayak v. Administrator-General of Bombay* (1895), 20 Bom. 450; *Ramgutte Acharjee v. Kistoonduite Debi* (1873), 20 W. R. C. R. 472.

⁷ *Motivahoo (Bai) v. Mamobai (Bai)* (1897), 24 I. A. 93; 21 Bom. 709; 1 C. W. N. 366; *Upendra Lal Boral v. Hem Chundra Boral* (1897), 25 Calc. 405; 2 C. W. N. 295; *Goswami Shri Girdharji v. Madhondas Premji* (1893), 17 Bom. 600, at p. 617; *Javerbai v. Kablibai* (1891), 16 Bom. 492. See *Tribhuvandas Rutonji Mody v. Gangadas Tricumji* (1893), 18 Bom. 7.

⁸ A gift to a person to be adopted by a son's wife is void, *Kashinath Chimnaji v. Chimnaji Sadashiv* (1906), 30 Bom. 477.

⁹ *Nagar Chandra Kundoo v. Ratan Mala Debi* (1910), 15 C. W. N. 66; *Dines Chandra Roy Chowdhry v. Biraj Kamini Dasi* (1911), 39 Calc. 87; 15 C. W. N. 945.

The decisions as to gifts to a class,¹ some of the members of which are incapable of taking, have given rise to some difficulty. Gift to class.

Where there is a bequest to a class, and the class is to be ascertained at the date of the death of the testator the members of the class who are then capable of taking are entitled to the bequest.²

Where there is a present gift, or bequest to persons capable of taking, which is intended afterwards to open out, and let in others who are in law not capable of taking, the gift or bequest operates in favour of the persons capable of taking.³

Where there is a bequest to a class, the members of which are to be ascertained at a date later than the date of the death of the testator, the bequest enures for the benefit of such members of the class as are capable of taking, although the class may be in terms wide enough to include persons not born at the date of the death of the testator.⁴

¹ In Jarman on Wills (4th ed.), 268, we find the following:—"A number of persons are popularly said to form a class when they can be designated by some general name as 'children,' 'grandchildren,' 'nephews,' but in legal language the question whether a gift is one to a class depends not upon these considerations, but upon the mode of the gift itself, namely, that it is a gift of an aggregate sum to a body of persons uncertain in number at the time of the gift, to be ascertained at a future time, and who are all to take in equal or some other definite proportions, the share of each being dependent for its amount upon the ultimate number of persons."

A bequest of a right of residence to a body of persons is not "a gift to a class," *Krishnanath Narayan v. Atmaran Narayan* (1891), 15 Bom. 543. A gift to named individuals* would not ordinarily be a gift to a class, see *Saltay Mahomed v. Janbai (Lady)* (1901), 3 Bom. L. R. 785.

² See Indian Succession Act (X. of 1865), s. 98. In this case the class does not include any persons born after the death of the testator, and therefore does not offend against the rule laid down in the *Tagore* case (*ante*, pp. 507, 508).

³ See *Bishen Chand (Rai) v. Asmuidu Koer (Mussumat)* (1883), 11 L. A. 164; 6 All. 560. In that case the Judicial Committee were considering a family arrangement, but in *Ram Lal Sett*

v. Kanai Lal Sett (1886), 12 Calc. 663, which was a case of a gift *inter vivos*, Wilson, J., treated the judgment as applicable to the law of wills. See also *Manjamma v. Padmanabhayya* (1889), 12 Mad. 393 (a case of a settlement). This view was accepted in *Bhagabati Barmanya v. Kali Charan Singh* (1911), 38 L. A. 54; 38 Calc. 468; 15 C. W. N. 395; 13 Bom. L. R. 375; S. C. in Court below (1905), 32 Calc. 992; 9 C. W. N. 749, and in *Bhuba Tarini Debya v. Peary Lal Sunyal* (1897), 24 Calc. 646; 1 C. W. N. 578, which was a case of a will governed by the Hindu Wills Act.

⁴ This has now been settled by *Bhagabati Barmanya v. Kali Charan Singh* (1911), 38 L. A. 54; 38 Calc. 468; 15 C. W. N. 393; 13 Bom. L. R. 375; S. C. in Court below (1905), 32 Calc. 992; 9 C. W. N. 749; *Radha Prasad Mullick v. Ranimoni Dasi* (1910), 38 Calc. 188; 15 C. W. N. 113 (which was decided with reference to the Hindu Wills Act); *Bhuba Tarini Debya v. Peary Lal Sunyal* (1897), 24 Calc. 646; 1 C. W. N. 578; *Ram Lal Sett v. Kanai Lal Sett* (1886), 12 Calc. 663; (a case of a family settlement); *Ranganudha Mudaliar v. Baghirathi Ammall* (1906), 29 Mad. 412; *Khettermohan Mullick v. Gungarnarain Mullick* (1881), 4 C. W. N. 671, n.; *Krishnamani Dasi (S. M.) v. Anandu Krishna Bose* (1869), 4 B. L. R. O. C. 231, at p. 279; *Sonu Sundara Mudaliar v. Ganga Bissen*

Where it is impossible to infer that the testator had the intention of benefiting at least those members of the class who are capable of taking, there is authority to show that the whole bequest fails.¹

Religious and
charitable
endowments.

Although the Hindu law does not permit a devise to an individual who is unborn at the time of the death of the testator, there is nothing to prevent a devise,² or a charge³ in favour of the service of an idol,⁴ or for the endowment of a temple, or for the maintenance of private or public religious ceremonies or worship,⁵ or for charitable purposes,⁶ or an endowment for the benefit of the public in the advancement of religion,

Soni (1904), 28 Mad. 386; *Ranganadha Mudaliar v. Baghirathi Ammal* (1906), 29 Mad. 412; *Manjanma v. Padmanabhayya* (1889), 12 Mad. 393; *Advocate-General v. Karmali* (1903), 29 Bom. 133, at p. 150; *Mangaldas Parmanandas v. Tribhuvandas Narasidas* (1891), 15 Bom. 652; *Tribhuvandas Ruttohi Mody v. Gungudas Tricumji* (1893), 18 Bom. 7; *Krishnarao Ramchandra v. Benabai* (1895), 20 Bom. 571; *Gordhandas v. Ramcoover (Bai)* (1901), 26 Bom. 449, at p. 468; 3 Bom. L. R. 857. *Contrit, Soulaniney Dossee v. Jogesh Chunder Dutt* (1877), 2 Calc. 262; *Kherodemonney Dossee v. Doorgamonney Dossee* (1878), 4 Calc. 455; 3 C. L. R. 315; *Chundramoney Dossee v. Motilal Mullick* (1879), 5 C. L. R. 496; *Rojomoyee Dassee v. Troylucko Mohiney Dassee* (1901), 29 Calc. 260, at p. 276; 6 C. W. N. 267, at p. 278; *Bramamayi Dasi (Srimuti) v. Jages Chandru Dutt* (1871), 8 B. L. R. 400; *Brajanath Dey Sirkar v. Anandamayi Dasi* (1871), 8 B. L. R. 208; *Jairam Narronji v. Kuverbai* (1885), 9 Bom. 491.

¹ *Khimji Jairam Narronji v. Morarji Jairam Narronji* (1897), 22 Bom. 533. See *Chundi Churn Barua v. Sidheswari Debi (Rani)* (1888), 15 I. A. 149; 16 Calc. 71.

² *Kallyprosono Mitter v. Gopeenath Kur* (1880), 7 C. L. R. 241; *Rajender Dutt v. Sham Chund Mitter* (1880), 6 Calc. 106; *Juggut Mohini Dossee v. Sokheemonney Dossee (Mussamut)* (1871), 14 M. I. A. 289; 17 W. R. C. R. 41; *Prafulla Chunder Mullick v. Jogendra Nath Sreemany* (1905), 9 C. W. N. 528. See Phillips'

and Trevelyan's "Hindu Wills," chap. xviii., and *post*, p. 518.

³ *Ashutosh Dutt v. Doorga Churn Chatterjee* (1879), 6 I. A. 182; 5 Calc. 438; 5 C. L. R. 296; *Sonatan Bysack v. Juggutsoondree Dossee (Sreemutty)* (1859), 8 M. I. A. 66.

⁴ It was held that a devise in a will to an idol which has not been consecrated was invalid in *Upendra Lal Boral v. Hemchundru Boral* (1897), 25 Calc. 405; 2 C. W. N. 295; *Rojomoyee Dassee v. Troylucko Mohiney Dassee* (1901), 29 Calc. 260; 6 C. W. N. 267, and *Nogendranandini Dassi v. Benoy Krishna Deb* (1902), 30 Calc. 521; 7 C. W. N. 121. A Full Bench of the Calcutta High Court has now held that such devise is valid, *Bhupati Nath Smrititirtha v. Ram Lal Maitra* (1909), 37 Calc. 128; 14 C. W. N. 18, followed in *Mohar Singh v. Het Singh* (1910), 32 All. 337. A bequest in favour of an unnamed deity is void for uncertainty; *Phundan Lal v. Arya Prithi Nidhi* (1911), 33 All. 739; see *post*, p. 520.

⁵ *Mohar Singh v. Het Singh* (1910), 32 All. 337; *Dwarkanath Bysack v. Burroda Persaud Bysack* (1878), 4 Calc. 443; 1 C. L. R. 506; *Prafulla Chunder Mullick v. Jogendra Nath Sreemany* (1905), 9 C. W. N. 528; *Bhuggobutty Prosonno Sen v. Gooroo Prosonno Sen* (1897), 25 Calc. 112, at p. 127; *Khusalchand v. Mahadevgiri* (1875), 12 Bom. H. C. 214.

⁶ See Phillips' and Trevelyan's "Hindu Wills," chap. xviii., and pp. 278-281. *Post*, chap. xix.

knowledge,¹ commerce, health,² safety, or any object beneficial to mankind.³

A grant to individuals is not exempt from the rule as to perpetuities although it may be actuated by religious motives.⁴

As to gifts and demises for religious or charitable purposes, see *post*,⁵ p. 518.

"If an estate is limited to two jointly, the one capable of taking, the Joint gift. other not, he who is capable of taking shall take the whole."⁶

Subject to the rule preventing a bequest to an unborn person, Appointment. the Hindu law permits a power of appointment.⁶

Save so far as he can provide for religious and charitable Perpetuities. endowments, a Hindu testator cannot create a perpetuity or limit for an indefinite period the enjoyment of the profits of his property.⁷

So far as family settlements in Bengal and Oudh are concerned the doctrine that there can be no gift to a person not in being at the time of the gift has to some extent been modified by the Bengal Settled Estates Act,⁸ and the Oudh Settled Estates Act,⁹ respectively, which permit under certain conditions a settlement of property for three generations. Settled estates in Bengal.

V. "Property, whether movable or immovable, must for many purposes be vested, more or less absolutely, in some person or persons for the benefit of other persons, and trusts of various kinds have been recognized and acted on in India in many cases," but trusts can only be sustained to the extent and for the purpose of giving effect to those beneficiary interests which the law recognizes.¹⁰ After the determination of those Trusts valid for valid purposes.

¹ As to a University, *Manorama Dassi v. Kali Charan Banerjee* (1903), 31 Calc. 166. The endowment of the Tagore Law Professorship is an instance of this, *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Sup. Vol. 47; 9 B. L. R. 377; 18 W. R. C. R. 359.

² As to a Hospital, *Fanindra Kumar Mitter v. Administrator General of Bengal* (1901), 6 C. W. N. 321.

³ Cf. Transfer of Property Act (IV. of 1882), s. 17.

⁴ *Anantha Tirtha Chariar v. Nagamulhu Ambalagaren* (1881), 4 Mad. 200.

⁵ *Nandi Singh v. Sita Ram* (1888), 16 I. A. 44; 16 Calc. 677; Succession Act (X. of 1865), s. 93.

⁶ *Motivahoo (Bai) v. Mamooabai (Bai)* (1897), 24 I. A. 93; 21 Bom.

709; 1 C. W. N. 366.

⁷ *Sookhmoy Chunder Duss v. Monohurri Dasi (Srimati)* (1885), 12 I. A. 103; 11 Calc. 684; *Raikeswari Dasi v. Debendranath Sircar* (1887), 15 I. A. 37, 15 Calc. 409; *Vullubhdas Damodhar v. Thucker Gordhandas Damodhar* (1890), 14 Bom. 360; *Rameshwar Prosad Singh v. Lachmi Prosad Singh* (1903), 7 C. W. N. 688, in *Asima Krishna Deb (Kumara) v. Kumara Krishna Deb (Kumara)* (1868), 2 B. L. R. O. C. 11, a trust for the accumulation for ninety-nine years of the surplus income of an estate was held to be void.

⁸ Ben. Act III. of 1904.

⁹ Act II. (U. P.) of 1900.

¹⁰ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Sup. Vol. 47, at pp. 71, 72; 9 B. L. R.

interests the beneficial interest in the residue of the property remains in the person who but for the will, would lawfully be entitled thereto.¹

VI. It is competent to a Hindu to create a life estate, or successive life estates, or any other estate for a limited term.²

Gift over.

A gift by will upon an event which is to happen, if at all, immediately at the close of a life in being will be good if the donee be in existence at the time of the death of the testator, but not otherwise.³ On these conditions an estate can be divested.⁴

For instance, a gift to A., and on the death of A. without issue to B.⁵

Accumulations.

The question how far, if at all, a Hindu can by will direct the accumulation of the profits of his property is not definitely settled.

In *Amrito Lall Dutt v. Surnomoye Dassee* (1897),⁶ Mr. Justice Jenkins

377, at pp. 401, 402; 18 W. R. C. R. 359, at pp. 367, 368; *Krishnamani Das* (S. M.) v. *Ananda Krishna Bose* (1869), 4 B. L. R. O. C. 231; *Rajender Dutt v. Sham Chund Mutter* (1880), 6 Calc. 106.

¹ *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Sup. Vol. 47, at p. 72; 9 B. L. R. 377, at p. 402; 18 W. R. C. R. 350, at p. 368.

² *Ibid.* 1 A. Sup. Vol. 47, at p. 75; 9 B. L. R. 377, at p. 405; 18 W. R. C. R. at p. 369; *Tarakeswar Roy (Kumar) v. Shoshi Shikareswar (Kumar)* (1883), 10 I. A. 51; 9 Calc. 952; 13 C. L. R. 62; *Kristoromoney Dossee (Sreemutty) v. Norendro Krishna (Maharajah)* (1888), 16 I. A. 29; 16 Calc. 383; *Mahomed Shumsol Hooda (Moulvie) v. Shewukram* (1874), 2 I. A. 7; 14 B. L. R. 226; 22 W. R. C. R. 409. A mere right of residence was given in *Krishnanath Narayan v. Atmaram Narayan* (1891), 15 Bom. 543, and in *Bhuggobutty Prosonno Sen v. Gooroo Prosonno Sen* (1897), 25 Calc. 112.

³ *Kristoromoney Dossee (Sreemutty) v. Norendro Krishna Bahadoor (Maharajah)* (1888), 16 I. A. 29; 16 Calc. 383; *Tarakeswar Roy (Kumar)*

v. *Shoshi Shikareswar (Kumar)* (1883), 10 I. A. 51; 9 Calc. 92; 13 C. L. R. 62; *Ram Lal Mookerjee v. Secretary of State* (1881), 8 I. A. 46; 7 Calc. 304; 10 C. L. R. 349; *Soorjeemoney Dossee (Srēemutty) v. Denobundoo Mullick* (1862), 9 M. I. A. 123, as explained in *Juttendromohun Tagore v. Ganendromohun Tagore* (1872), 1 A. Sup. Vol. 47; 9 B. L. R. 377; 18 W. R. C. R. 359 (see observations of James, L.J., at p. 381, and of Sir L. Peel at p. 383 of 9 B. L. R.); *Bilaso v. Munnill* (1911), 33 All. 558, following *Bhagabati Barnanya v. Kali Charan Singh* (1911), 38 I. A. 54; 38 Calc. 468; 15 C. W. N. 393; 13 Bom. L. R. 375. See Indian Succession Act (X. of 1865), ss. 118-124, applied to certain Hindu Wills (*post*, p. 516) by the Hindu Wills Act (XXI. of 1870), s. 2.

⁴ *Ibid.*

⁵ *Lakshminarayana Nainar v. Valiammal* (1910), 34 Mad. 250; *Soorjeemoney Dossee v. Denobundoo Mullick* (1857), 6 M. I. A. 526; (1862), 9 M. I. A. 123; *Bhoobun Mohinee Debya v. Hurriah Chunder Chowdhry* (1878), 5 I. A. 138; 4 Calc. 23; 2 C. L. R. 339.

⁶ 24 Calc. 589; 1 C. W. N. 345.

held "that it was not incompetent for a Hindu, with proper limitations, to direct an accumulation of the income of property which, under his will, vests in his executors or trustees," and that "in the absence of special provision the limit must be that which determines the period during which the course of devolution of property can be directed or controlled by a testator." On appeal¹ the question did not arise, but one of the judges of the Calcutta High Court² dissented from the above view. In another case arising out of the same will, Mr. Justice Woodroffe inclined to the opinion that accumulations were not valid beyond the minority of the devisee,³ and Mr. Mayne⁴ inclines to the view that accumulations are not permissible. A more recent Calcutta decision supports Mr. Justice Jenkins' view.⁵

In *Nafar Chandra Rundoov. Ratan Mala Debi*, [1910] 15 C. W. N. 66, the Court upheld a direction to accumulate income for the marriage expenses of a son, and in Bombay a direction to accumulate for sixteen years has been upheld.⁶

The Hindu Wills Act⁷ has applied certain of the sections of the Indian Succession Act (X. of 1865) to the attestation, revocation, revival, interpretation, and probate of wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist, on and after the 1st September, 1870, within the territories subject to the Lieutenant-Governor of Bengal, or the local limits of the ordinary original civil jurisdiction of the High Courts of Madras or Bombay,⁸ and in the case of such wills and codicils made outside those limits, so far as relates to immovable property situated within those territories or limits.⁹

The Act provides¹⁰ that marriage shall not revoke any such will or codicil,¹¹ and that nothing therein contained shall authorize a testator to bequeath property which he would not have alienated *inter vivos*, or to deprive any person of any

¹ (1898) 25 Cal. 662; 2 C. W. N. 389; (1900) 27 I. A. 128; 27 Cal. 996; 4 C. W. N. 649; 2 Bom. L. R. 446.

² (1898) 25 Cal. at pp. 690, 691; 2 C. W. N. at pp. 395, 396.

³ *Ranee Money Dassee (Sreemutty) v. Premmoney Dassee (Sreemutty)* (1905), 9 C. W. N. 1033, at p. 1043.

⁴ "Hindu Law," 7th ed., p. 571, see *ante*, p. 346.

⁵ *Rajendra Lall Agarwalla v. Rajoomari Debi* (1906), 34 Cal. 5; 11 C. W. N. 65.

⁶ *Jamnabai v. Dharsey* (1902), 4 Bom. L. R. 803.

⁷ Act XXI. of 1870.

⁸ Wherever the property be situate, *Ravji Ranchod Nask v. Vishnu Ranchod Naik* (1884), 9 Bom. 241.

⁹ For an instance of a will, which in respect of some property was governed by the Hindu Wills Act, and which in respect of other property was not so governed, see *Jairam Naronji v. Kuverbai* (1885), 9 Bom. 491.

¹⁰ S. 3.

¹¹ In the case of a will not subject to the Hindu Wills Act, marriage does not revoke a will.

right of maintenance of which, but for s. 2 of the Act, he could not deprive him by will.

And that nothing therein contained shall affect any law of adoption or intestate succession, and that nothing therein contained shall authorize any Hindu, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before the 1st of September, 1870.

Gift to unborn persons.

The word "interest" in this proviso has been held by more than one decision to include not only the extent or duration of the estate given, but also the capacity of the donee to take,¹ and thereby to apply to wills governed by the Hindu Wills Act the rule² prohibiting devises to a person who is unborn at the date of the death of the testator. The effect of these decisions is to render inoperative in the case of Hindu wills ss. 19-101 of the Indian Succession Act³ which have been expressly applied by the Act to Hindu Wills. Should the question come before the Judicial Committee that Board may take the view that effect must be given to all the sections of the Indian Succession Act⁴ which have been applied, and that the word "interest" does not include "capacity to take."⁵

Execution of wills.

Under the Hindu Wills Act⁶ every testator must execute his will according to the following rules:—

First.—The testator shall sign⁷ or affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.⁸

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall show that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will or have seen some other person sign the will

¹ *Alangamanjori Dabee v. Sonamoni Dabee* (1882), 8 Calc. 637; 10 C. L. R. 459; *Callynath Naugh Chowdhry v. Chunder Nath Naugh Chowdhry* (per Pontifex, J.) (1882), 8 Calc. 378, at p. 390; 10 C. L. R. 207, at p. 215; *Radha Prasad Mallick v. Ranimoni Dasi* (1910), 38 Calc. 188; 15 C. W. N. 113; *Jairam Narronji v. Kuverbai* (1885), 9 Bom. 491, at p. 506.

² *Ante*, pp. 507, 508.

³ Act X. of 1865.

⁴ *Ibid.*

⁵ Cf. *Norendranath Sircar v. Kamalbasini Dasi* (1896), 23 I. A. 18; 23 Calc. 563; *Bank of England v. Vaghano*, [1891] A. C. 107.

⁶ Act X. of 1865, s. 50, applied by Act XXI. of 1870, s. 2.

⁷ The place of signature seems to be immaterial, see *In the goods of Porthouse* (1897), 24 Calc. 784.

⁸ The execution of a will by the impression of a stamp complies with the section, *Nirmal Chunder Bando-padhya v. Saratmoni Debye* (1898), 25 Calc. 911; 2 C. W. N. 642.

in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of the witnesses must sign the will in the presence of ¹ the testator, but it is not necessary that more than one witness be present at the same time, and no form of attestation is necessary.

The witness must sign as such. His signature written as the name of the person who signed the will for the testator does not amount to an attestation of the will.² The witness must sign. It is not sufficient that he should affix a mark,³ but his full signature is not necessary. The placing of his initials is sufficient.⁴

The attesting witnesses must sign the will after the testator has executed it.⁵

It is not necessary that the attesting witnesses should see the testator sign the will, or should observe any signature on the paper which they attest, provided that the testator's signature was on the will when the witnesses attested it, and that the testator makes them understand that the paper which they attest is his will.⁶

An endorsement by the Registrar to the effect that the testator admitted to him the execution of the will is a good attestation.⁷

Effect can be given to a legacy to an attesting witness.⁸

The following are the sections of the Indian Succession Act ⁹ Portions of Succession Act applied to Hindu Wills. which have been applied by s. 2 of the Hindu Wills Act ¹⁰ (as

¹ This means "in sight of," see *Easias v. Gabriel* (1871), 3 N. W. P. 32. In the case of the execution of a will by a *purdashashin* lady the attestation by the Registrar, who was in the verandah outside the room in which she sat, and whom she could have seen if she liked, was held sufficient, *Horendranarain Acharji Chowdhry v. Chandra Kanta Lahiri* (1888), 16 Calc. 19.

² In the matter of the petition of *Hemlota Dabee* (1882), 9 Calc. 226; *S. C. Grish Chunder Banerjee v. Hemlota Debi*, 11 C. L. R. 359.

³ *Nitye Gopal Sircar v. Nagendra Nath Mitter Mozumdar* (1885), 11 Calc. 429; *Fernandez v. Alves* (1879), 3 Bom. 382. These authorities were questioned in *Ammayee v. Yalumalai* (1891), 15 Mad. 261.

⁴ *Ammayee v. Yalumalai* (1891), 15 Mad. 261.

⁵ In the matter of the petition of *Hurroesundari Dabia* (1880), 6 Calc.

17; 6 C. L. R. 303; *Bissonath Dinda v. Doyaram Jana* (1880), 5 Calc. 738; 5 C. L. R. 565; *Fernandez v. Alves* (1879), 3 Bom. 382; *Khuttun Kooer (Mussamut) v. Poona Kooer (Mussamut)* (1875), 24 W. R. C. R. 322.

⁶ *Manickbai v. Hurmasji Bomanji* (1877), 1 Bom. 547; *Amarendra Nath Chatterjee v. Kashi Nath Chatterjee* (1899), 27 Calc. 169.

⁷ *Horendranarain Acharji Chowdhry v. Chandra Kanta Lahiry* (1888), 16 Calc. 19; *Nitye Gopal Sircar v. Nagendra Nath Mitter Mozumdar* (1885), 11 Calc. 429; In the matter of the petition of *Hurroesundari Dabia* (1880), 6 Calc. 17; 6 C. L. R. 305; In the goods of *Roymonee Dossee* (1875), 1 Calc. 150.

⁸ Cf. s. 54 of the Indian Succession Act (X. of 1865), which has not been applied to Hindu wills.

⁹ Act X. of 1865.

¹⁰ Act XXI. of 1870.

altered by the Probate and Administration Act ¹) to the above-mentioned Hindu Wills, viz. :—

Sections 46, 48, 49, 50, 51, 55, and 57 to 77 (both inclusive), sections 82, 83, 85, 88 to 108 (both inclusive), sections 106 to 177 (both inclusive), and section 187.

Probate and
Administration
Act.

The Probate and Administration Act ² provides for the grant of probate of wills and letters of administration to the estates of (amongst other persons) all Hindus.³

Under that Act ⁴ the executor of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.⁵ Before the passing of the Hindu Wills Act the estate of a deceased Hindu did not vest in the executor, even if probate had been granted to him.⁶ He was practically a manager.⁷

Malabar law.

The Malabar Wills Act ⁸ declares the testamentary power of, and provides rules for the execution of wills and codicils by, persons governed by the Marumakkatayam or the Aliyasantana law of inheritance. The effect of that Act is to place such persons to the extent of the matters dealt with in the Act, in the same position as persons governed by the Hindu Wills Act.

Oudh
taluqdars.

Sections 49, 50, 51, 54, 55, and 57 to 77 (both inclusive), and sections 82, 83, 85, and 88 to 98 (both inclusive) of the Indian Succession Act ⁹ apply to wills and codicils made by Oudh taluqdars.¹⁰

¹ Act V. of 1881, s. 154.

² Act V. of 1881.

³ This includes Sikhs, see *Bhagwan Koer (Ram) v. Jogendra Chandra Bose* (1903), 30 I. A. 249; 31 Calc. 11; 7 C. W. N. 895; 5 Bom. L. R. 845. As to what are "Hindus," see *ante*, pp. 18–21.

⁴ S. 4.

⁵ See Phillips' and Trevelyan's "Hindu Wills," pp. 352, 353.

⁶ *Kherodemoney Dossee v. Doorgamoney Dossee* (1878), 4 Calc. 455, at

p. 468; 3 C. L. R. 315, at p. 327; *Maniklal Atmaram v. Manchersh Dinsha Coachman* (1876), 1 Bom. 269; *Jaykali Debi (Srimati) v. Shibnath Chatterjee* (1866), 2 B. L. R. O. C. 1; *Sharo Bibi v. Buldeo Das* (1867), 1 B. L. R. O. C. 24.

⁷ *Sarat Chandra Banerjee v. Bhupendra Nath Bosu* (1897), 25 Calc. 103.

⁸ Mad. Act V. of 1898.

⁹ Act X. of 1865.

¹⁰ Act I. of 1869, s. 19.

CHAPTER XIX.

RELIGIOUS AND CHARITABLE ENDOWMENTS.

THERE are in India a large number of endowments for religious, charitable, educational, or public purposes.

The objects of such endowments are various. It may be in favour of an idol, or for the endowment of a temple, or for the maintenance of private or public religious ceremonies or worship, or for charitable purposes, or for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any object beneficial to mankind.¹

It is competent to the Civil Courts to determine rights of management of such endowments, and rights to hold offices thereunder, to interfere to protect the property of such endowments, to construe and preserve the schemes thereof and generally to decide questions which may arise in relation to the due performance of the trusts of the endowments.²

A suit will lie to determine the rights of individuals or classes of individuals to worship in a particular temple or to exclude them from so worshipping.³

The Courts cannot deal with questions relating to worship in temples situate outside British India.⁴

It has been held in Madras⁵ that s. 4 of the Pensions Act, 1871,⁶ which enacts "Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may

¹ Cf. Transfer of Property Act (IV. of 1882), s. 117.

² *Ante*, pp. 4, 5. See Act V. of 1908 (Civil Procedure Code), s. 9. As to a suit for a declaration that a mohunt has not been duly appointed, see *post*, p. 541.

³ See *Sankaralinga Nadan v. Rajeswari Dorai (Raja)* (1908), 35 L. A. 176; 31 Mad. 236; 12 C. W. N. 946.

⁴ *Trimbak v. Lakshman* (1895), 20 Bom. 495.

⁵ *Venkateswari Aiyar v. Secretary of State* (1907), 31 Mad. 12; *Secretary of State v. Abdul Hakim Khan* (1890), 2 Mad. 294; *Kolandas Mudali v. Sankara Bharadhi* (1882), 5 Mad. 302; *Subramanya Ayyar v. Secretary of State* (1883), 6 Mad. 361; *Athavulla v. Gouse* (1888), 11 Mad. 283.

⁶ X.XIII. of 1871.

have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted," has no application to religious and charitable endowments, but an opposite view has been maintained in Bombay.¹

Creation of Endowment.

Mode of
creation of
endowment.

The endowment may be created by grant or by will, or in any other way by which property may be transferred.

Conditions of
validity.

In order to constitute a valid endowment all that is necessary is to set apart specific property for specific purposes, and where these purposes are clearly religious or charitable in their nature² the trust is not invalid because it transgresses against the rule which forbids the creation of a perpetuity.³

The English law, which forbids bequests for superstitious uses, has no application to such endowments.⁴

Perpetuity.

To be valid an endowment must be created in perpetuity for religious or charitable purposes.

"It appears therefore to their Lordships upon the authority of that case,⁵ and upon the principle of endowments, that this was not an endowment by the Maharajah in perpetuity for the benefit of the idol, so as to establish that the property so conveyed to the idol was to be the property of the idol for ever, and that nobody could alienate it. Suppose the Maharajah had established the idol in his house, would anybody pretend that he could not sell his house? Well, then, what would become of the idol's temple in the house? He could sell the house notwithstanding he had put an idol there; and what would become of the idol itself? Here there was no endowment, no priest, no public, no one legally interested in the worship of this idol, except the Maharajah himself, and nothing to show that the Maharajah intended to establish it for the benefit of his sons or heirs, or anybody else in perpetuity."⁶

Divesting of
interest of
endower.

The endower must divest himself of all beneficial interest in the property dedicated to the endowment.

v. Bava Sahab Santi Miya (Sayad) (1896), 22 Bom. 496; *Vyanji v. Sarjarao Apajirao* (1891), 16 Bom. 537. See *Maharawal Mohansingji Jey-singji v. Government of Bombay* (1881), 8 I. A. 77; 5 Bom. 408.

¹ *Ante*, pp. 510, 511.

² *Prafulla Chunder Mullick v. Jogendra Nath Sreemany* (1905), 9 C. W. N. 528, at p. 535; *Bhuggobutty Prosonno Sen v. Gooroo Prosonno Sen* (1897), 25 Calc. 112, at pp. 126, 127.

³ *Khusalchand v. Mahadevgiri* (1875), 11 Bom. H. C. 214. Cf. *Das Mercers v. Cones* (1864), 2 Hyde, 65.

⁴ *Mahatab Chand v. Mirdad Ali* (1833), 5 Ben. Sel. R. 268 (new edition, 313).

⁵ *Brojosoondery Debia (Maharanees) v. Luchmee Koonwaree (Ranee)* (1873), 15 B. L. R., note to p. 176, at p. 178; 20 W. R. C. R. 95, at p. 96. See *Madhab Chandra Bera v. Sarat Kumari Debi* (1910), 15 C. W. N. 126.

Mr. Mayne says that the trust is imperfect "where the founder applies his own property to the creation of a pagoda, or any other religious or charitable foundation, keeping the property itself and the control of it absolutely in his own hands. The community may be greatly benefited by this arrangement, so long as it lasts, but its continuance is entirely at his own pleasure. It is like a private chapel in a gentleman's park, and the fact that the public have been permitted to resort to it will not prevent its being closed or pulled down, provided there has been no dedication of it to the public. It will pass equally unencumbered to his heirs, or to his assignees in insolvency. He may diminish the funds so appropriated at his pleasure, or absolutely cease to apply them to the purpose at all. In short, the character of the property will remain unchanged, and its application will be at his own discretion."¹

It is not necessary that the whole ownership in the property should be transferred. A trust for an endowment may be created by a charge upon the property or an appropriation of a portion of the income.²

Charge on property.

In that case the property can be dealt with,³ is partible,⁴ and descends subject to the charge. The interest subject to the charge can be attached and sold.⁵

In one case where the property was granted for the maintenance of a *mutt* (monastery) and the charities connected with it, the remainder of the profits to be applied to the maintenance of the grantee or his descendants, the Court upheld an assignment of property for such maintenance for the life of the assignee, who was a member of the family, but for no longer.⁶

A mere easement may be created for a charitable or religious purpose.⁷

Easement.

For instance, a right to use a *ghat* to which persons on the point of death are removed.⁷

¹ "Hindu Law," 7th ed., p. 583. See *Brojosoondery Debi* (Maharane) v. *Luchmee Koonwaree* (Ranee) (1873), 15 B. L. R. 176, note; 20 W. R. C. R. 95.

² See *Sonatsun Byack v. Juggut-soondree Dossee* (1859), 8 M. I. A. 66; *Ashutosh Dutt v. Doorga Churn Chatterjee* (1879), 6 I. A. 182; 5 Calc. 438; 5 C. L. R. 296; *Jagadindra Nath Roy Bahadur* (Maharajah) v. *Hemanta Kumari Debi* (Rani) (1904), 31 I. A. 203, at pp. 209, 219; 32 Calc. 129, at pp. 140, 141; 8 C. W. N. 809, at p. 820; 6 Bom. L. R. 765; *Sakrappa v. Shivappa* (1910), 35 Bom. 153; 12 Bom. L. R. 584.

³ *Basoo Dhul v. Kishen Chunder Geer Gosain* (1870), 13 W. R. C. R. 20;

Futto Bibee v. Bhurrit Lall Bhukut (1868), 10 W. R. C. R. 299; see *Jadubundu Odhekaree v. Lokenauth Gere* (1863), Marsh. 303; 2 Hay, 160.

⁴ *Ram Coomarr Paul v. Jogender Nath Paul* (1878), 4 Calc. 56; 2 C. L. R. 310; *Suppammal v. Collector of Tanjore* (1889), 12 Mad. 387, at p. 391.

⁵ *Ashutosh Dutt v. Doorga Churn Chatterjee* (1879), 6 I. A. 182; 5 Calc. 438; 5 C. L. R. 296; *Sakrappa v. Shivappa* (1910), 35 Bom. 153; 12 Bom. L. R. 584.

⁶ *Sathianama Bharati v. Saravana-bagi Ammal* (1894), 18 Mad. 266.

⁷ *Jaggamoni Dasi v. Nilmoni Ghosal* (1882), 9 Calc. 75; 11 C. L. R. 502.

Future
operation.

There is no objection to an endowment coming into operation at a future time, as, for instance, after a life estate.¹

Certainty.

The endowment must be certain both as to its subject-matter and as to its object;² but it is unnecessary that a testator should fix the exact amount to be expended. If he supplies a measure of the bequest, the Court will ascertain how much should be applied, and will fix a scheme.³

Dharm.
Sarakam.

A gift to trustees for use as "dharm,"⁴ or in "sarakam,"⁵ or for purposes of popular usefulness or for purposes of charity⁶ has been held to be invalid as being too indefinite. As to a gift to an idol, see *ante*, p. 510, note 4.

In the following cases the bequest has been held to be sufficiently definite :—

"Charitable
purposes."

A settlement to the extent of Rs. 500 a month to be applied to "charitable purposes" at a dharamsala which the testator had founded.⁷

Feeding
Hindus.

The creation of a fund the income of which was to be spent in perpetuity in feeding indigent Hindus at the outer gate of the testator's house.⁸

"Sadavarat."

A direction that certain rents be used "for *sadavarat*"⁹ where from the will it appeared that the testator intended his executors to establish a definite *sadavarat* in some definite place.¹⁰

¹ *Gobind Prasad v. Gomti* (1908), 30 All. 288.

² See Indian Succession Act (X. of 1865), s. 76, applied to certain Hindu wills (*ante*, p. 516), by the Hindu Wills Act (XXI. of 1870), s. 2.

³ See *Krishnamani Dasi* (S. M.) v. *Ananda Krishna Bose* (1869), 4 B. L. R. O. C. 231. As to the settlement of a scheme, see *post*, p. 524.

⁴ "Law, virtue, legal or moral duty," Wilson's "Glossary," p. 137; *Runchordas Vandrawandas v. Parvatibai* (1899), 26 I. A. 71; 23 Bom. 725; 3 C. W. N. 621; 1 Bom. L. R. 607; *Parthasarathy Pillai v. Thiruvengada Pillai* (1907), 30 Mad. 340. In the last-named case Subrahmanya Ayyar, J., held that the word "*dharmam*," when used in connection with gifts of property by a Hindu, has a perfectly well settled meaning, and denotes objects indicated by the terms "*ishtha*" and "*poorta*" (sacrifices and charities). He held that the word is a compendious term, and is not a mere vague and uncertain expression (see Mandlik's "Vyavahara Mayukha," pp. 333 *et seq.*, and Pundit

Prannath Saraswati's "Hindu Law of Endowments," pp. 18 *et seq.*). See also *Motivahu (Bgi) v. Mamubai (Bai)* (1895), 19 Bom. 647; *Devshankar Naranbhai v. Motiram Jageshwar* (1893), 18 Bom. 136; *Morarji Cullianji v. Nenbai* (1892), 17 Bom. 351; *Gangbai v. Thavur Mulla* (1863), 1 Bom. H. C. 71; *Advocate-General v. Damothar* (1852), Perry's "Oriental Cases," 526; *Sib Chunder Mullick v. Trepoorah Soondary Dossee* (1842), Fulton, 98, 109.

⁵ Good works; *Bapi (Bai) v. Jamnadas Hathisang* (1897), 22 Bom. 774.

⁶ *Trikumdas Damodhar v. Haridas Morarji* (1907), 31 Bom. 583; 9 Bom. L. R. 560.

⁷ *Gordhan Das v. Chunni Lal* (1907), 30 All. 111.

⁸ *Rajendra Lal Agarwalla v. Raj Coomari Debi* (1906), 34 Calc. 5.

⁹ "Distribution of provisions daily to passers-by, mendicants and paupers." Wilson's "Glossary," p. 449.

¹⁰ *Morarji Cullianji v. Nenbai* (1892), 17 Bom. 351; *Jamnabai v. Khimji Vullubdass* (1889), 14 Bom. 1.

A direction that the executors should "get a Shiva's temple erected Shiva's temple. at a reasonable cost in a suitable place within the compound of the brick- built *bhaitakhana* house, inclusive of the building and garden thereto." ¹

A bequest to complete the building of a temple, and to instal and main- Temple. tain an idol therein,² or to establish a *thakoor* (idol) at such place as the executor should think fit.³

A direction that certain properties should be placed in the hands of Worship of named persons who should spend the surplus income in the worship and *Kali*. sheba of *Kali* after establishing an image of the goddess.⁴

A direction to a trustee "to spend suitable sums at the annual *sraddha* *Sradhs*, etc. or anniversaries of my father, mother, and grandfather, as well as of myself after my demise, for the performance of the ceremonies and the feeding of the Brahmins and the poor; to spend suitable sums for the annual contribution and gifts to the Brahmins, pundits holding *tolls* (native schools) for (diffusion of Sanskrit) learning in the country at the time of the Doorga Pujah; to spend suitable sums for the perusal of Mohabharat and Pooran, and for prayer to God during the month of Kartick. Should there be any surplus after the above expenditure, then I do hereby direct my trustee to spend the said surplus in the contribution toward the marriage of the daughters of the poor in my class and of the poor Brahmins and towards the education of the sons of the poor amongst my class, and of the poor Brahmins and other respectable castes as my trustee shall think fit to comply." ⁵

A direction to pay for the worship of Siva on the night called *Sivaratri*.⁶ *Sivaratri*.

A bequest for the maintenance of an Anna Chatra.⁷

Anna Chatra.

A bequest to such religious and charitable purposes as the executor may think proper.⁸

¹ *Gokool Nath Guha v. Issur Lochun Roy* (1886), 14 Calc. 22. See *Ramtonoo Mullick v. Ramgopaul Mullick* (1829), 1 Knapp. 295. In a similar case where the amount to be expended was left to the absolute discretion of the executor the Court refused to give effect to the bequest, *Surbomungola Dabee v. Mohendronath Nath* (1879), 4 Calc. 508. This decision is not consistent with *Parbati Bibee (Musst) v. Ram Barun Upadhyaya* (1904), 31 Calc. 895; 8 C. W. N. 653, post, note 8. See *Gangbai v. Thavar Moolla* (1863), 1 Bom. H. C. 73.

² *Mohar Singh v. Het Singh* (1910), 32 All. 337.

³ *Rojomoyee Dassee v. Troylucko Mohiney Dassee* (1901), 29 Calc. 260; 6 C. W. N. 267.

⁴ *Bhupati Nath Smrititirtha v. Ram Lal Maitra* (1909), 37 Calc. 128; 14 C. W. N. 18.

⁵ *Dwarkanath Bysack v. Burroda Persaud Bysack* (1878), 4 Calc. 443;

1 C. L. R. 566. On appeal the Court expressed a doubt as to whether the bequests to pundits holding tolls, and for the reading of the Mohabharat and Pooran and for prayer to God were valid, but it was unnecessary to decide the question. This case was followed in *Lakshmishankar v. Vajj-nath* (1881), 6 Bom. 24, in which case the testator devised all his property to trustees, directing them to reduce it into money, and expend it in the performance of his funeral ceremonies, and in feeding Brahmins according to the custom of his caste. A direction to feed Brahmins on a certain day in the year was upheld in *Kedar Nath Dutt v. Atul Krishna Ghose* (1908), 12 C. W. N. 1083.

⁶ *Kedar Nath Dutt v. Atul Krishna Ghose* (1908), 12 C. W. N. 1083.

⁷ *Advocate-General v. Strangman* (1905), 6 Bom. L. R. 56.

⁸ *Parbati (Bibee) v. Ram Barun*

Pujah.

A devise of certain house property first for the celebration of pujahs and the worship of an idol, and then that the children of the testator should be allowed to live there.¹

Cypres doctrine.

As to the application of the cypres doctrine where there has been a failure of the charitable bequest, see *Mayor of Lyons v. Advocate-General of Bengal* (1875), 3 I. A. 32; 1 Cal. 303.

Endowment must be real.

The dedication to be effectual must be real, and not merely colourable. It cannot be created as a means of keeping property in a particular family,² and thus evading the rule³ requiring a donee to be a person living at the time of the gift or of the death of the testator. It must be an absolute gift for the religious or charitable purpose, constituting the dedicated property inalienable.⁴

If it be a pretended endowment to prevent creditors obtaining relief against the property of their debtors, no effect can be given to it.

The mere use of the word "debutter" (belonging to a deity)⁵ or of a similar expression is not conclusive.

A deed of trust must be held to be nominal only when no charity or trust is brought into existence, when there is no proof of the application of the alleged endowments for the maintenance thereof and the whole conduct of the parties is inconsistent with the hypothesis of a genuine trust;⁶ but if the trust has once been effectually created, the fact that the parties have omitted to carry out the conditions of the trust, will not invalidate it,⁷ or permit the founder to resume it as private property.⁸ In that case the persons interested must take steps to enforce the performance of the trust.⁹

Upadhya (1904), 31 Cal. 895; 8 C. W. N. 653, and cases there cited. *Contrâ Surdomungola Dabee v. Mohendronath Nath* (1879), 4 Cal. 508, and *Jamnabai v. Dharsey* (1903), 4 Bom. L. R. 893.

¹ *Bhuggobutty Prosonno Sen v. Gooroo Prosonno Sen* (1897), 25 Cal. 112.

² *Promotho Dassee v. Radhika Persaud Dutt* (1875), 14 B. L. R. 175.

³ *Ante*, pp. 507, 508.

⁴ *Hara Sunder Majumdar v. Basunta Kumar Roy* (1904), 9 C. W. N. 154.

⁵ *Shama Charan Nandi v. Abhiram Goswami* (1906), 33 Cal. 511; 10 C. W. N. 738.

⁶ *Roop Lal v. Lakshmi Doss* (1905), 29 Mad. 1; *Suppammal v. Collector of Tanjore* (1889), 12 Mad. 387. See *Madhub Chandra Bera v. Sarat Kumari Debi (Srimati Rani)* (1910), 15 C. W. N. 126.

⁷ See *Suppammal v. Collector of*

Tanjore (1889), 12 Mad. 387, at p. 391; *Gordhan Das v. Chunni Lal* (1907), 30 All. 111, at pp. 114, 115; *Juggut Mohini Dossee v. Sokheemoney Dossee* (1871), 14 M. I. A. 289, at p. 306; 10 B. L. R. 19, at pp. 33, 34; 17 W. R. 41, at p. 44; *Madhub Chandra Bera v. Sarat Kumari Debi (Rani)* (1910), 15 C. W. N. 126; *Kasheshwree Dassee v. Krishnakaminee Dassee* (1863), 2 Hay, 557.

⁸ *Gopeenath Chowdhry v. Gooroo Dass Surma* (1872), 18 W. R. C. R. 472; *Ram Narain Singh v. Ramoon Paurey* (1874), 23 W. R. C. R. 46; see *post*, p. 524. As to the power of the members of a family to repudiate an endowment for a family idol, see *post*, p. 542.

⁹ *Hemangini Dasi v. Nobin Chand Ghose* (1882), 8 Cal. 788; 11 C. L. R. 370; *Brojomohun Doss v. Hurrololl Doss* (1880), 5 Cal. 700; 6 C. L. R.

The dedication must be clearly proved.¹

Proof of
dedication.

"Where the trust itself is one declared by word of mouth by a person at the point of death, and is in terms by no means clearly indicating an intention on the part of the donor to deprive his family of all substantial enjoyment of his property, the Court may fairly require the fullest proof in support of such a trust."²

"Before it can be established that lands have been endowed in perpetuity, so that they can never be sold and must be tied up in perpetuity, some clear evidence of an endowment must be given."³

A mere purchase of land in the name of an idol does not by itself create an endowment.⁴

When the question is whether an alleged endowment is real or fictitious, the mode of dealing with the property by the donor and his successors is an important matter for consideration.⁵ The application of the proceeds of property for the benefit of an endowment by the founder or his heir is evidence of the existence and of the *bonâ fide* character of the endowment,⁶ but the mere fact that a portion of the profits of land has been used for the worship of an idol is not conclusive as to the existence of an endowment.⁷ It is, however, a fact which may well be taken into consideration when the intention of the founder has to be gathered from an ancient document expressed⁸ in ambiguous language.

Mode of
dealing with
property.

An incidental decision as to the validity of a debutter grant in a resumption proceeding may be some evidence, at any rate, of a claim to such grant.⁹

Resumption
proceeding.

The terms of an endowment will ordinarily be ascertained from the instrument of creation, or if the creation be by word of mouth by the statement of the endower at the time of the creation. Where from lapse of time or for other reasons such

Evidence of
terms of en-
dowment.

58; *Panchcourié Mull v. Chumroolall* (1878), 3 Calc. 563; 2 C. L. R. 121; *Ramnarain Singh v. Ramoon Paurey* (1874), 23 W. R. C. R. 76.

¹ *Doorganath Roy (Konwar) v. Ramchunder Sen* (1876), 2 I. A. 52; 2 Calc. 341.

² *Bipro Prosad Mytee v. Kenae Doyee (Mussamut)* (1865), 3 W. R. C. R. 165, at p. 167; 5 W. R. C. R. 82.

³ *Brojosoondery Debia (Maharaneé) v. Luchmee Koonwaree (Ranee)* (1873), 15 B. L. R. 176, note; 20 W. R. C. R. 95.

⁴ *Ibid.* See *Bipro Prosad Mytee v. Kenae Doyee (Mussamut)* (1865), 3 W. R. C. R. 165.

⁵ *Ram Chandra Mukerjee v. Ranjit Singh* (1899), 27 Calc. 244, at p. 252; 4 C. W. N. 405, at p. 410.

⁶ *Gunga Narain Sircar v. Brinda-*

bun Chunder Kur Chowdhry (1865), 3 W. R. C. R. 142; *Muddun Lal v. Komal Bibee (Sreemutty)* (1867), 8 W. R. C. R. 42; *Madhub Chandra Bera v. Sarat Kumari Debi (Srimati Rani)* (1910), 15 C. W. N. 126.

⁷ See *Ram Pershad Doss Adhikaree v. Sreechuree Doss Adhikaree* (1872), 18 W. R. C. R. 399; *Narain Persad Mytee v. Roodur Narain Mungle* (1863), 2 Hay, 490. See *Doorganath Roy (Konwar) v. Ram Chunder Sen* (1876), 2 I. A. 52; 2 Calc. 341.

⁸ *Abhiram Goswami v. Shyama Charan Nandi* (1909), 36 I. A. 148; 36 Calc. 1003; 14 C. W. N. 1.

⁹ *Madhub Chandra Bera v. Sarat Kumari Debi (Srimati Rani)* (1910), 15 C. W. N. 126, explaining *Budh Singh Dhudhuria v. Niradbura Roy* (1905), 2 C. L. J. 431.

evidence is not obtainable, the terms can be ascertained from the practice of the endowment, or from the practice of similar endowments.

The mode in which offices connected with an endowment have been held is evidence of the terms of the endowment.¹

Settlement of scheme.

When a testator, having expressed a clear intention to create a trust, has failed to indicate the means by which the trust is to be carried out,² or when for other reasons it is necessary so to do,³ the Court will settle a scheme for the management of a religious or charitable endowment.⁴

Such scheme should give due consideration to the established practice of the institution, and to the position of persons connected with it.

"The first thing to be done is to take an account of the trust property. Much must depend upon the result of that account. Until the trust funds are ascertained it seems impossible that any scheme can be settled."⁵

Variation of scheme.

A scheme passed by the Court is liable to variation for good cause shown.⁶ /

Revocation of trust.

A founder of his descendants cannot revoke an endowment which has been validly created.⁷

As to endowments for family idols, see *post*, p.542.

The mere fact that the worship has not been properly performed or the terms of the endowment carried out does not give a right to recover possession.⁸

Purposes of religious endowments.

The religious purposes for which religious endowments are ordinarily created by Hindus are for the worship at temples,

¹ See *Nimaye Churn Pojaree v. Moorolee Chowdhry* (1864), 1 W. R. C. R. 108.

² *Prafulla Chunder Mullick v. Jogendra Nath Sreemany* (1905), 9 C. W. N. 528.

³ See *ante*, p. 520.

⁴ *Prayaga Doss Jee Varu v. Tirumala Sriranga Charylu Varu* (1907), 34 I. A. 78; 31 Mad. 138; 11 C. W. N. 442; 9 Bom. L. R. 588; S. C. in Court below (1905), 28 Mad. 319; *Thackersey Deuraj v. Hurbhum Nursey* (1883), 8 Bom. 432.

⁵ *Chotalal Lakhmiram v. Manohar Ganesh Tambekar* (1899), 26 I. A. 199; 24 Bom. 50; 4 C. W. N. 23; 2 Bom. L. R. 510; S. C. in Court

below (1887), *Manohar Ganesh Tambekar v. Lakhmiram Govindram*, 12 Bom. 247.

⁶ *Prayag Doss Ji Varu Mahant v. Tirumala Srirangacharlavaru* (1905), 28 Mad. 319; S. C. on appeal (1907), 34 I. A. 78; 31 Mad. 138; 11 C. W. N. 442; 5 Bom. L. R. 588; *Damodarbhat v. Bhogilal Karsondas* (1899), 24 Bom. 45.

⁷ *Juggut Mohini Dossee v. Sokheemoney Dossee* (1871), 14 M. I. A. 289, at p. 302; 10 B. L. R. 19, at p. 31; 17 W. R. C. R. 41, at p. 43.

⁸ *Mohesh Chunder Chuckerbutty v. Koylash Chunder Chuckerbutty* (1869), 11 W. R. C. R. 443; cases *ante*, p. 522, notes 8, 9.

or for *mutts* (monastic institutions devoted to the teaching of different systems of Hindu religious philosophy).

"The two classes of institutions, viz. temples and *mutts*, are supplementary in the Hindu ecclesiastical system, both conducing to spiritual welfare, the one by affording opportunities for prayer and worship, the other by facilitating spiritual instruction and the acquisition of religious knowledge, the presiding element being the deity or idol in the one, the learned and pious ascetic in the other."¹

Endowments for the worship of a public or of a private deity² are permitted by Hindu law.³

The deity of a temple is considered as a personality holding proprietary rights.⁴

Endowment for worship of deity.

Proprietary rights of deity.

According to Hindu notions, when an idol has been, so to say, consecrated by the appropriate ceremony performed, and *muntra* pronounced the deity of which the idol is the visible image, resides in it, and not in any substituted image, and the idol, so spiritualised, becomes what is called a juridical person.⁵ A suit cannot, however, be brought or defended in the name of the idol.⁶ It must be brought by the manager.⁷

"If the image is cracked, broken, mutilated, or lost it may be substituted by a new one duly consecrated. Fresh consecration or substitution is also necessary if the image be polluted in any way. Removal from the temple amounts to pollution in the case of an image of Siva only in some cases.

Lost or broken idol.

¹ *Vidyapurna Tirtha Swami v. Vidyavidhi Tirtha Swami* (1904), 27 Mad. 435, at p. 454.

² The endowment is in favour of the deity, not of the image.

³ *Rupa Jagshet v. Krishnaji Govind* (1884), 9 Bom. 169; *Prafulla Chunder Mullick v. Jogendra Nath Sreemany* (1905), 9 C. W. N. 529. See *Shibesoree Debia (Maharane)* v. *Mothooranath Acharjo* (1869), 13 M. I. A. 270; 13 W. R. P. C. 18; *Prosunno Kumari Debya v. Golab Chand Baboo* (1875), 2 I. A. 145; 14 B. L. R. 450; 23 W. R. C. R. 253; *Manohar Ganesh Tambekar v. Lakshmiram Govindram* (1887), 12 Bom. 247; S. C. on appeal *Chotalal Lakshmiram v. Manohar Ganesh Tambekar* (1899), 26 I. A. 199; 24 Bom. 50; 4 C. W. N. 23; 2 Bom. L. R. 516.

⁴ *Thackersey Dewraj v. Hurbhum Nursey* (1883), 8 Bom. 432, at p. 456; *Tulsidas Mahanta v. Bejoy Kishore Shome* (1901), 6 C. W. N. 178; *Babaji Rao v. Luzmandas* (1903), 5 Bom. L. R. 932; *Shibesoree Debia*

(Maharane) v. *Mothooranath Acharjo* (1869), 13 M. I. A. 270, at p. 273; 13 W. R. P. C. 18, at p. 19.

⁵ *Doorga Proshad Doss v. Sheo Proshad Pandah* (1880), approved of in *Vidyapurna Tirtha Swami v. Vidyavidhi Tirtha Swami* (1904), 27 Mad. 435, at p. 440; 7 C. L. R. 278 (it was held in that case that a plaintiff claiming *debutter* land which together with the idol was in the possession of the defendant, must claim the idol also); *Jagadindra Nath Roy Bahadur (Maharajah) v. Hemanta Kumari Debi (Rani)* (1904), 31 I. A. 203, at pp. 209, 210; 32 Calc. 129, at pp. 140, 141; 8 C. W. N. 809, at p. 820; 6 Bom. L. R. 765; *Bhuggobutty Prosonno Sen v. Gooroo Prosonno Sen* (1897), 25 Calc. 112, at p. 127; *Bali Panda v. Jadumoney Santra* (1910), 38 Calc. 284; 15 C. W. N. 36.

⁶ *Jodhi Rai v. Basdeo Prasad* (1911), 33 All. 735, overruling *Raghunathji Maharaj (Thakur) v. Shah Lal Chand* (1897), 19 All. 330.

⁷ *Post*, p. 532.

A new image cannot be substituted when the original one is free from any defect of the kind mentioned. Nor can the old image be replaced by a new one, by reason of the occurrence of any defect therein, such as cracking, when it is an ancient image believed to have been established by a God, or by a saint, or by an Asura,¹ or by a remote ancestor of a family, or when its origin is unknown. Nor is a new image necessary if it can be restored by rejoining its broken parts together, as when the same is metal, and a limb is severed. When an image is to be replaced by a new one, it must be done as soon as possible, for the damaged image ceases to be the god, and cannot be worshipped in those cases in which the substitution of a new image is necessary."²

Non-existing
idol.

A gift to a trustee either by an instrument *inter vivos* or by will for the purpose of establishing and dedicating a non-existing idol is valid.³

Trustee or Manager.

Trustees, etc.

Although the appointment of a trustee may not be in law necessary for the valid creation of an endowment,⁴ it follows from the nature of the things that there must be a trustee, manager, or other person charged with its administration.⁵

Females.

A woman could not, as such, be excluded from the management of endowed property, but she is incompetent to discharge spiritual duties.⁶

Endower may
be trustee.

There is nothing to prevent the person who creates the endowment constituting himself a trustee.

It does not follow that where an endowment is created without a trustee the person creating the endowment is liable as trustee.⁷

No obligation
where no
endowment.

When no endowment or trust has been created, there is no obligation to provide for the expenses of a family idol.⁸

¹ Evil spirit.

² G. C. Sarkar's "Hindu Law," 3rd ed., p. 441, and texts there cited. See *Doorga Proshad Dass v. Sheo Proshad Pandah* (1880), 7 C. L. R. 278, at p. 281.

³ *Bhupati Nath Smrititirtha v. Ram Lal Moitra* (1909), 37 Cal. 128; 14 C. W. N. 18, overruling *Upendra Lal Boral v. Hem Chundra Boral* (1897), 25 Cal. 405; 1 C. W. N. 295; *Rojomoyee Dassee v. Troylukho Mohiney Dassee* (1901), 29 Cal. 260; 6 C. W. N. 269, and *Nogendra Nandini Dassee v. Benoy Krishna Deb* (1902), 30 Cal. 521; 7 C. W. N. 121; *Mohar Singh v. Het Singh* (1910), 32 All. 337; *Chatarbhuj v. Chatarjit* (1911), 33 All. 253. As to a gift to an unnamed idol, see *ante*, p. 510, note 4.

⁴ See *Bhuggobutty Prosonno Sen v. Gooroo Prosonno Sen* (1897), 25 Cal. 112; *Manohar Ganesh Tambekar v.*

Lakhmiram Govindram (1887), 12 Bom. 247, at p. 263.

⁵ See *Koonla Kant Ghosal v. Ram Huree Nund Gramee* (1827), 4 Ben. Sel. R. 196, at p. 200 (new edition 247, at p. 252).

⁶ See *Janoki Debi (Srimati) v. Gopal Acharya (Sri)* (1882), 10 I. A. 32; 9 Cal. 766; 13 C. L. R. 30; *Joy Deb Surmah v. Huroputty Surmah* (1871), 16 W. R. C. R. 282; *Surendra Keshav Roy v. Doorgasundari Dassee* (1892), 19 I. A. 108, at p. 128; 19 Cal. 513, at pp. 531, 532; *Keshavbhat v. Bhagirathibai* (1866), 3 Bom. H. C. A. C. 75.

⁷ *Raghobar Dial v. Kesho Ramanuj Das* (1888), 11 All. 18; *Ram Pershad Doss Adhikaree v. Sreshuree Doss Adhikaree* (1872), 18 W. R. C. R. 399.

⁸ *Sham Lal Set v. Huro Soonduree Goopta* (1866), 5 W. R. C. R. 29.

A trust is not necessary in law for the purpose of effecting Trust. a dedication to an idol ;¹ but as it is only in an ideal sense that property can be said to belong to an idol, the possession and management of it must in the nature of things be entrusted to some person as trustee or manager.²

The person to whom the management and superintendence *Shebait*. of an endowed temple or idol and of the worship are entrusted is called the *Shebait*.³

The *shebait* has not the legal property, but only the title of manager of a religious endowment.⁴ The property is vested in the deity.⁵

The *shebait* is entitled to the custody of the idol and its property. Custody of As to the limitation in a suit by him for such custody, see *Bali Panda v. idol. Jadumani Santra*, [1910] 15 C. W. N. 36.

The right of a *shebait* or of a priest to offerings made to the idol would Right to depend upon the nature of such offerings. Where they are of a perishable offerings. nature, such as articles of food, they would be appropriated by the priest or by the nearest Brahmin available ; but where the idol is an ancient one permanently established for public worship, and the offerings are generally of a more or less permanent character, being coins and other metallic articles, in the absence of any custom or express declaration by the owner to the contrary, they are taken to be intended to contribute to the maintenance of the shrine with all its rites, ceremonies, and charities, and not to become the personal property of the priest.⁶

The possession and management of the dedicated property Right to are vested in the *shebait* ⁷ or other manager. possession and management.

The Court can in a proceeding under s. 145 of the Criminal Procedure Code (V. of 1898) declare the possession of a temple, but not of the offerings ⁸ or of the right to act as priest.⁹

¹ *Manohar Ganesh Tambekar v. Lakmiram Govindram* (1887), 12 Bom. 247, at p. 265 ; S. C. on appeal *Chotalal Lakhmiram v. Manohar Ganesh Tambekar* (1899), 26 I. A. 199 ; 24 Bom. 50 ; 4 C. W. N. 23 ; 2 Bom. L. R. 516 ; *Bhuggobutty Prosonno Sen v. Gooroo Prosonno Sen* (1897), 25 Calc. 112.

² *Prosunno Kumari Debya v. Golab Chand Baboo* (1875), 2 I. A. 145, at p. 152 ; 14 B. L. R. 450, at p. 459 ; 23 W. R. C. R. 253, at pp. 255, 256 ; ante, p. 525.

³ See Wilson's "Glossary," p. 476.

⁴ *Shibesourree Debia (Maharanes) v. Mothooranath Acharjo* (1869), 13 M. I. A. 270, at p. 273 ; 13 W. R. P. C. 18, at p. 19 ; *Babajirao v. Luzmandas* (1903), 5 Bom. L. R. 932.

⁵ Ante, p. 525.

⁶ *Girijanund Datta Jha v. Sailanund Datta Jha* (1896), 23 Calc. 645, at p. 655. As to an account of the offerings, see post, p. 529. As to the right of Agradani Brahmins to things given away at a *sraddh*, see *Hari Churn Agradani v. Sasti Churn Agradani* (1910), 14 C. W. N. 1005.

⁷ *Jagadindra Nath Roy Bahadur (Maharaja) v. Hemanta Kumara Debi (Rani)* (1904), 31 I. A. 203 ; 32 Calc. 129 ; 8 C. W. N. 809 ; 6 Bom. L. R. 765.

⁸ *Ram Saran Pathak v. Raghu Nandan Gir* (1910), 38 Calc. 387. Cf. *Kader Batcha v. Kader Batcha Rowthan* (1905), 29 Mad. 237.

⁹ *Guiram Ghosal v. Lal Behari Das* (1910), 37 Calc. 578.

Although he is only a manager, all transactions including litigation are carried on by him in his own name.¹

As to suits brought by him, see *post*, p. 532.

He is not only empowered but is bound to do whatever is necessary for the benefit or preservation of the properties of the idol² or of the endowment.

As to his power to alienate the property, see *post*, p. 533.

Reimbursement.

A manager, or his executor after his death, is entitled to be reimbursed from the trust estate all sums properly expended by him as manager, including moneys properly expended by him in defending his position as *shebait* against an unsuccessful claimant to the office.³

In the case of a suit by the executor of the manager, the period of limitation is six years.⁴

Position of manager.

"As regards the property, the manager is in the position of a trustee. But as regards the service of the temple and the duties that appertain to it, he is rather in the position of the holder of an office or dignity which may have been originally conferred on a single individual, but which in course of time has become vested by descent in more than one person."⁵

To follow customary usage.

"It is the duty of the trustee or manager to maintain the customary usages of the institution, and if he fails to do so he is . . . guilty of a breach of trust, and, still more so, if he deliberately attempts to effect a vital change of usage and make it binding on the worshippers by obtaining a decree of the Court to establish it."⁶

He may be restrained by injunction from making any unjustifiable changes which would affect the character of the temple as a religious institution.⁷

In the absence of an express injunction by the founder a Court, where it is necessary, may permit a *shebait* to remove the idol to his house to remain there during his turn of worship.⁸

¹ *Juggodumba Dossee v. Puddo-money Dossee* (1875), 15 B. L. R. 318, at p. 330; *Vidyapurna Tirtha Swami v. Vidyaniidhi Tirtha Swami* (1904), 27 Mad. 435, at p. 442; *Babajirao v. Luzmandas* (1903), 5 Bom. L. R. 932.

² *Pramada Nath Roy v. Poorna Chandra Roy* (1908), 35 Calc. 691, at p. 698; 12 C. W. N. 550, at p. 557.

³ *Pearry Mohan Mukerji v. Norendra Nath Mukerji* (1909), 37 I. A. 27; 37 Calc. 229; 14 C. W. N. 261.

⁴ *Ibid.* Act XV. of 1877 (Limitation Act), Sch. II., Art. 120; Act IX. of 1908, Sch. I., Art. 120.

⁵ *Ramanathan Chetti v. Murugapa*

Chetti (1906), 33 I. A. 139, at p. 144; 29 Mad. 283, at p. 289; 10 C. W. N. 824, at p. 829; 8 Bom. L. R. 598.

⁶ Judgment of the Madras High Court in *Sankaralinga Nadan v. Rajeswara Dorai* (1908), 35 I. A. 176, at p. 180; 12 C. W. N. 946, at p. 951: See *Vidyapurna Tirtha Swami v. Vidyaniidhi Tirtha Swami* (1904), 37 Mad. 435, at pp. 454, 455.

⁷ *Krishnasami Ayyangar v. Samararam Singrachariar* (1906), 30 Mad. 158.

⁸ *Ram Soonder Thakoor v. Taruck Chunder Turkoruthun* (1872), 19 W. R. C. R. 28.

Where any details of the management are regulated by custom, such custom should, if reasonable, be followed, as, for instance, a custom as to the fund from which repairs are to be provided.¹

A decision of the majority of the trustees of a public trust, arrived at in the fair exercise of their powers, and after fair consideration by all of them,² binds the minority in matters connected with the management of the trust property, yet it does not bind them in matters which are *ultra vires* and beyond the proper sphere of the trust.³

The manager must apply the income to the purposes of the endowment.

As to the powers of the heads of *mutts*, see *post*, p. 531.

Where there was a *bonâ fide* dispute as to the succession to the office of *ojha* or high priest of a temple, the Court upheld an arrangement by which a sum of money was to be paid out of the offerings to one of the claimants.⁴

A *shebait* or other manager or trustee is liable to account in respect of his management of, or dealing with, the property,⁵ including offerings received on account of an idol, or gifts made to the institution.⁶

The votary "must needs be and is concerned in the maintenance of a decent and orderly worship. He is interested, too, in the honour and respect of the deity he reveres. . . . He desires a regular and continuous or at least a periodical round of sacred ceremonies, which might fail if the offerings of past years were all squandered, while those of any given year fell short."⁷

The constitution and rules of religious brotherhoods attached to Hindu temples are by no means uniform in their character, and the important principle to be observed by the Courts is to ascertain, if that be possible, the special laws and usages

¹ *Vythilinga Pandara Sannadhi v. Soonasundara Mudaliar* (1893), 17 Mad. 199.

² *Charavur Teramath v. Urath Lakshmi* (1883), 6 Mad. 270; *Kunhan v. Moorthi* (1910), 34 Mad. 406.

³ *Samaram Singarachariar v. Krishnaswami Ayyangar* (1902), referred to at 30 Mad. 103.

⁴ *Grijanund Datta Jha v. Sailajanund Datta Jha* (1896), 23 Cal. 345.

⁵ Even if he is himself the founder of the endowment, *Thackersey Dewraj v. Hurbhum Nureey* (1883), 8 Bom. 432.

⁶ *Manohar Ganesh Tambekar v. Lakhmiram Govindram* (1887), 21

Bom. 247, at pp. 261, 262; S. C. on appeal *Chotalal Lakhmiram v. Manohar Ganesh Tambekar* (1899), 26 I. A. 199; 24 Bom. 50; 4 C. W. N. 23, 2 Bom. L. R. 516; *ante*, p. 527; *Jugat Kishore v. Lakshmandas* (1899), 23 Bom. 659. See *Rajeshwar Mullick v. Gopeshwar Mullick* (1907), 35 Cal. 226; 12 C. W. N. 323.

⁷ *Manohar Ganesh Tambekar v. Lakhmiram Govindram* (1887), 12 Bom. 247, at pp. 261, 262; S. C. upheld on appeal *Chotalal Lakhmiram v. Manohar Ganesh Tambekar* (1899), 26 I. A. 199; 24 Bom. 50; 4 C. W. N. 23; 2 Bom. L. R. 516.

governing the particular community whose affairs become the subject of litigation, and to be guided by them." ¹

'Mutt.'

A *mutt* or *muttam* (a monastic religious institution devoted to the teaching of the different systems of Hindu religious philosophy) is presided over by a head who is variously called a *mohunt*, a *swami*, a *gosavi*, a *sannyasi* (if a Brahmin), a *paradasi* (if a Sudra), or a *jeer*.

Their origin.

"The origin of *muttams* is ordinarily as follows: A preceptor of religious doctrine gathers around him a number of disciples whom he initiates into the particular mysteries of the order, and instructs in his religious tenets. Such of these disciples as intend to become religious teachers, renounce their connection with their family and all claims to the family wealth, and, as it were, affiliate themselves to the spiritual teacher whose school they have entered. Pious persons endow the schools with property which is vested in the preceptor for the time being, and a house for the school is erected, and a *muttam* constituted. The property of the *muttam* does not descend to the disciples or elders in common; the preceptor, the head of the institution, selects among the affiliated disciples him whom he deems the most competent and in his own lifetime installs the disciple so selected as his successor, not uncommonly with some ceremonies. After the death of the preceptor the disciple so chosen is installed in the *gaddi*, and takes by succession the property which has been held by his predecessor. The property is in fact attached to the office, and passes by inheritance to no one who does not fill the office." ²

As to the origin of *mutts*, see *Kailasam Pillai v. Natarajah Tambiran*, [1909] 33 Mad. 265; *Sammantha Pandara v. Sellappa Chetti* (1879), 2 Mad. 175; *Giyana Sambanda Pandara Sannadhi v. Kandasami Tambiran* (1887), 10 Mad. 375; *Vidyapurna Tirtha Swami v. Vidyansidhi Tirtha Swami*, [1904] 27 Mad. 435; Ghose's "Hindu Law," Chap. VIII.

Object of
Mutt.

"In the case of *mutts* . . . though there are idols connected therewith, the worship of such is quite a secondary matter, the principal purpose of such an institution being the maintenance, in circumstances likely to command due respect and estimation, of a line of competent religious teachers who . . . are given for the welfare of the foundation itself, a real and, so to speak, beneficial interest in the usufruct, the restrictions governing the disposition thereof being of the nature of a mere moral obligation. Having regard to these facts, it is obvious that the correct view to be taken is that in the case of *mutts* the ideal person is the office of the spiritual teacher *Acharya*,

¹ *Muttu Ramalinga Setupati (Rajah) v. Perianayagam Pillai* (1874), 1 I. A. 209, at p. 228.

² *Sammantha Pandara v. Sellappa Chetti* (1879), 2 Mad. 175, at p. 179.

which, as it were, is incarnate in the person of each successive *swami* who for the time is a real owner, and not a mere trustee." ¹

The law as to *mohunts* and their offices, functions and duties is to be found in custom and practice which in each case has to be proved by evidence.²

The position and powers of the *mohunt*, *swami*, or *gosavi* or *Mohunt*. other head of a *mutt* are different from those of the *shebait* or other manager of a temple or endowment for an idol.

In the absence of a grant or usage enforcing a specific trust a *mohunt* is not accountable for his expenditure of the income of the endowment. He is, however, required therewith to maintain the purposes of the *mutt*, the surplus, if any, being at his unfettered disposal. He is thus neither a life tenant nor a trustee.³

Powers over income.

His powers over the corpus are no greater than those of other managers. In the absence of custom lunacy does not divest the rights of the head of a *mutt*.⁴

Powers over corpus.

Lunacy.

The manager of a *mutt* need not necessarily be an ascetic. Whether he must be so or not depends upon the usage of the institution.⁵

Manager need not be an ascetic.

In some cases the head of a *mutt* may be a married man.⁶ Among the *Gosains* of the Deccan and certain other places marriage does not work a forfeiture of the office of *mohunt* and the rights and properties appendant to it.⁷

There is nothing to prevent a *mohunt* possessing private property, nor is there any presumption that property held by him belongs to the *mutt*:⁸ but it has been held in Bombay⁹ that the *swami* of a *mutt* presumably has no private property, and must be assumed to be pledging the credit of the *mutt* when he borrows money for the purposes of the *mutt*.

May own property.

As to the inheritance to a *mohunt*, see *ante*, pp. 399, 400.

"A *shebait*, *mohunt*, or other manager of an endowment may

Powers of manager.

¹ *Vidyapurna Tirtha Swami* v. *Vidyavidhi Tirtha Swami* (1904), 27 Mad. 435, at pp. 442, 454, 455.

² *Greedharee Doss v. Nundokishore Doss* (1867), 11 M. I. A. 405, at p. 428; 8 W. R. P. C. 25, at p. 26.

³ *Kailasam Pillai v. Nataraja Thambiran* (1909), 33 Mad. 265, referring to *Giyana Sambandha Pandara Sannadhi v. Kanda Sami Thambiran* (1887), 10 Mad. 375, and *Vidyapurna Tirtha Swami v. Vidyavidhi Tirtha Swami* (1904), 27 Mad. 435; *Burm Sueroop Doss (Mohunt) v. Khashee Jha* (1873), 20 W. R. C. R. 471; *Khusalchund v. Mahadevgiri* (1875),

12 Bom. H. C. 214.

⁴ *Vidyapurna Tirtha Swami v. Vidyavidhi Tirtha Swami* (1904), 27 Mad. 435.

⁵ *Sathapayyar v. Periasami* (1890), 14 Mad. 1, at pp. 9, 10.

⁶ See *Sathapayyar v. Periasami* (1890), 14 Mad. 1.

⁷ *Rambharti Jagruphanti (Gosain) v. Surajbharti Haribharti (Mohant)* (1880), 5 Bom. 683.

⁸ *Kishora Dossjee (Sree Mohant) v. Coimbatore Spinning and Weaving Company* (1902), 26 Mad. 79.

⁹ *Shankar Bharati Swami v. Venkapa Naik* (1885), 9 Bom. 422.

deal with the endowed property for its benefit and preservation, and especially for the purpose of defending it from hostile litigious attack." ¹

He is "empowered to do whatever may be required for the service of the idol, and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir." ²

The manager of an endowment has all the ordinary powers of a manager.

Leases. He can create derivative tenures and estates conformable to usage; and leases for a reasonable term. ³

As to permanent leases, see *post*, p. 534.

If the manager grant a lease for an unreasonable term, it would apparently enure so long as he continues to be manager. ⁴

A person who has no independent rights, but is a mere nominee of the person to whom the endowment was granted, has no authority to grant leases. ⁵

The deposition of the manager of an endowment by the act of a foreign state does not affect his rights in respect of property in British India. ⁶

Person to sue. A *mohunt*, *shebait*, or other manager of an endowment is entitled to sue where it be necessary on behalf of the endowment for the protection or realization of the property of the endowment, or otherwise for its benefit. ⁷

He is not entitled to sue for a mere declaration when he is entitled to substantive relief. ⁸

For an instance of a suit to exclude certain persons from worshipping in a temple, see *Sankaralinga Nadan v. Rajeswara Dorai (Raja)*, [1908] 35 I. A. 176; 31 Mad. 236; 12 C. W. N. 546.

Parties to suit. Persons interested as worshippers in a public religious endowment may

¹ *Hossein Ali Khan v. Bhagaban Das (Mahanta)* (1906), 34 Calc. 249, at p. 255; 11 C. W. N. 261, at p. 265; *Pramada Nath Roy v. Poorna Chandra Roy* (1908), 35 Calc. 691, at p. 698; 12 C. W. N. 550, at p. 557.

² *Prosunno Kumari Debya v. Golab Chand Baboo* (1875), 2 I. A. 145, at p. 152; 14 B. L. R. 450, at p. 459; 23 W. R. C. R. 253, at pp. 255, 256.

³ *Shibessuree Debia (Maharane)* v. *Mothooranath Acharjo* (1869), 13 M. I. A. 270; 13 W. R. P. C. 18; *Nallayappa Pillian v. Ambalavahana Pandara Sannadhi* (1903), 2 Mad. 465.

⁴ *Arruth Misser v. Juggurnath Indrawamee* (1872), 18 W. R. C. R. 439; *Burm Suroop Doss (Mohunt) v. Khashee Jha* (1873), 20 W. R. C. R. 471; *Ramchandra Shankarbava*

Dravid v. Kashinath Narayan Dravid (1894), 19 Bom. 271, see *post*, p. 535.

⁵ *Ram Doss v. Mohesur Deb Missee* (1867), 7 W. R. C. R. 446.

⁶ *Goswami Shri Girdharji v. Madhavadas Premji* (1893), 17 Bom. 601; *Shriman Goswami v. Goswami Shri Girdharlalji* (1878), 17 Bom. 620.

⁷ See *Sankamurti Mudaliar v. Chidambara Nadan* (1893), 17 Mad. 143; *Jagadindra Nath Roy Bahadur (Maharaja) v. Hemanta Kumari Debi (Rani)* (1904), 31 I. A. 203; 32 Calc. 129; 8 C. W. N. 809; 6 Bom. L. R. 765. Where the manager is a minor he obtains the benefit of s. 6 of the Limitation Act (IX. of 1908), *ibid.* See also Act XV. of 1877, s. 7.

⁸ *Rathnasabapathi Pillai v. Ramasami Aiyar* (1910), 33 Mad. 452. Specific Relief Act (I. of 1877), s. 42.

be added as parties to a suit instituted by a trustee on behalf of the endowment against third parties, if such joinder is considered by the Court as desirable in the interests of the trust,¹ as where the trustee after a decree by the first Court had relinquished his rights.²

The manager of an endowment may incur debts and borrow money for the proper expenses of the endowment such as keeping up the religious worship, repairing the temples,³ or other possessions of the idol, defending hostile litigious attacks, and other like objects. He may alienate or encumber the property to the extent to which there is an existing necessity for so doing, his power in that respect being analogous to that possessed by the manager for an infant heir,⁴ or a female with a restricted estate.⁵

Debts and
alienation.

The advisability of filling up a tank is not a sufficient necessity.⁶

Debts incurred by a *de facto* manager of an endowment (other than a mere trespasser)⁷ *bonâ fide* in the interests of the endowment would apparently be on the same footing as that incurred by a *de jure* manager.⁸ A mortgage by a mere claimant to the membership is not sustainable.⁹

Except where he has pledged his personal credit the manager is not personally liable for the debts of the endowment.¹⁰

Personal
liability.

The annual revenues of endowments, as distinguished from

¹ *Chidambaram Chettiar v. Ranga-chariar (Sri)* (1905), 29 Mad. 106.

² *Sankaralinga Nadan v. Rajeswara Dorai (Raja)* (1908), 35 I. A. 176; 31 Mad. 236; 12 C. W. N. 546.

³ *Doorganath Roy (Konwur) v. Ramchunder Sen* (1876), 4 I. A. 52, at pp. 62, 63; 2 Calc. 341, at pp. 350, 351.

⁴ *Abhiram Goswami v. Shyama Charan Nandi* (1909), 36 I. A. 148; 36 Calc. 1003; 14 C. W. N. 2; 11 Bom. L. R. 1234; *Prosunno Kumari Debya v. Golab Chand Baboo* (1875), 2 I. A. 145; 14 B. L. R. 450; 23 W. R. C. R. 253; *Hossein Ali Khan v. Bhagaban Das (Mahanta)* (1906), 34 Calc. 249; 11 C. W. N. 261; *Doorganath Roy (Konwur) v. Ramchunder Sen* (1876), 4 I. A. 52, at p. 63; 2 Calc. 341, at p. 351; *Sheo Shankar Gir v. Ram Shewak Chowdhri* (1896), 24 Calc. 77, at p. 82; *Collector of Thanav. Hari Sitaram* (1882), 6 Bom. 546; *Parootam Gir v. Dat Gir* (1903), 25 All. 296, at pp. 304, 311; *Daivasikamani Pandarasan-*

nidhi (Srimath) v. Noor Mahomed Routhan (1907), 31 Mad. 47; *Devaskamoney Pandarasanmadhi (Sreemath) v. Palaniappa Chettiar* (1910), 34 Mad. 535; *Khusalchand v. Mahadevgiri* (1875), 12 Bom. H. C. 214. In *Narayan v. Chintaman* (1881), 5 Bom. 393, the Court limited the power to the pledging of the income. As to the powers of a manager for an infant heir, see *ante*, pp. 273-277.

⁵ *Jugessur Buttobyal v. Roodro Narain Roy (Rajah)* (1869), 12 W. R. C. R. 293.

⁶ *Jnananjan Banerjee v. Adoremoney Dassee* (1909), 13 C. W. N. 805.

⁷ *Ram Churn Pooree v. Nunhoo Mundul* (1870), 14 W. R. C. R. 147.

⁸ See *Saminatha v. Purushottama* (1892), 16 Mad. 67; *Kasim Saiba v. Sudhindra Thirtha Swami* (1895), 18 Mad. 359.

⁹ See *Madho Prasad v. Ramrattan Gir* (1911), 15 C. W. N. 838.

¹⁰ See *Peary Mohun Mookerjee (Rajah) v. Narendra Krishna Mukerjee* (1900), 5 C. W. N. 273.

Pledges of
revenue.

the *corpus*, may occasionally, when it is necessary to do so in order to raise money for purposes essential to the temple or other institution, but not further or otherwise, be pledged.¹

As to the proceeds of land acquired for public purposes, see *Kamini Debi v. Pramatha Nath Mookerjee* (1911), 39 Calc. 33.

A *mohunt*, manager, or other trustee of an endowment cannot, except for such necessary purposes as above mentioned, alienate or encumber the endowed property.²

Bombay Act II. of 1863, s. 8, cl. 3, provides :—

Lands
exempt from
and revenue.

“ It is, however, hereby declared that lands held on behalf of religious or charitable institutions wholly or partially exempt from the payment of land revenue shall not be transferable from such institutions either by assignment, sale (whether such sale be judicial, public, or private), gift, devise, or otherwise howsoever, and no *Nazrana* shall be liable on account of such lands.”³

As to the exemption of religious and charitable institutions from land revenue in territories subject to Act XI. of 1852, *i.e.* in the territories of the Dekkan, Khandesh, and Southern Maratha country, and in other districts more recently annexed to the Bombay Presidency, see the above section.

Permanent
lease.

A permanent lease cannot be given by a *mohunt*, *shebait*, or other manager except under circumstances which justify an alienation.⁴

¹ *Narayan v. Chintaman* (1881), 5 Bom. 393.

² *Abhiram Goswami v. Shyama Charan Nandi* (1909), 36 I. A. 148, at p. 164; 36 Calc. 1003, at p. 1013; 14 C. W. N. 1, at p. 10; 11 Bom. L. R. 1234, at p. 1247; *Prosunno Kumpri Debja v. Golab Chand Baboo* (1875), 2 I. A. 145; 14 B. L. R. 450; 23 W. R. C. R. 253; *Gnasambanda Pandara Sannadhi v. Velu Pandaram* (1899), 27 I. A. 69; 22 Mad. 271; 4 C. W. N. 329; 2 Bom. L. R. 597; *Gopal Dass (Mohunt) v. Kerpam Dass (Mohunt)*, Ben. S. D. A. 1850, p. 250; *Jnananjan Banerjee v. Adoremoney Dassee* (1909), 13 C. W. N. 805; *Ganesh Dharmidhar Maharajdev (Shri) v. Keshavrav Gobind Kulgavkar* (1890), 15 Bom. 625; *Vidyapurna Tirtha Swami v. Vidyavidhi Tirtha Swami* (1904), 27 Mad. 435, at pp. 439, 456; *Shibessuree Debia (Maharanees) v. Mothooranath*

Acharjo (1869), 13 M. I. A. 270; 13 W. R. P. C. 18; *Narayan v. Chintaman* (1881), 5 Bom. 393; *Collector of Thana v. Hari Sitaram* (1882), 6 Bom. 546; *Nallayappa Pillian v. Ambalavahana Pandara Sannadhi* (1903), 27 Mad. 465; *Sambanda Mudaliyar v. Nanasambandapandara* (1863), 1 Mad. H. C. 298. When the property has been acquired by Government under the Land Acquisition Act (I. of 1894, s. 54), the award may direct investment of the compensation money in Government securities, *Shiva Rao v. Nagappa* (1905), 29 Mad. 117; *Kamini Debi v. Pramatha Nath Mookerjee* (1911), 39 Calc. 33.

³ See *Narayan v. Chintaman* (1881), 5 Bom. 393.

⁴ *Abhiram Goswami v. Shyama Charan Nandi* (1909), 36 I. A. 148; 36 Calc. 1003; 14 C. W. N. 1; 11 Bom. L. R. 1234; *Jnananjan Baner-*

As to the limitation for a suit to set aside such lease, see Act IX. of Limitation. 1908, Sched. 1, Art. 134; and as to the law under the Limitation Act of 1877, *Abhiram Goswami v. Shyama Charan Nandi*, [1909] 36 I. A. 148; 36 Calc. 1003; 14 C. W. N. 1; 11 Bom. L. R. 1234; followed in *Shyam Chand Jiu (Sri Sri Ishwar) v. Ram Kanai Ghose*, [1911] 38 I. A. 76; 38 Calc. 526; 15 C. W. N. 417; 13 Bom. L. R. 421.

As to the alienation of the interest of the grantor in property upon which endowments have been charged, see *ante*, p. 519.

An act in excess of his powers by a manager or other trustee is voidable, and subject to the law of limitation can be repudiated by a subsequent holder of the office,¹ or by any other person interested in the trust.

In the case of a *mutt* an unauthorized alienation by the head would apparently enure for the life of the grantor,² or at any rate during his tenure of office, provided, at any rate, that the service of the *mutt* be not prejudiced thereby.

The *shebait* or other manager of an endowment is bound by the lawful acts of the previous incumbent, but not by acts done in fraud of the trust.³

The right of a manager to sue to recover property of the endowment unlawfully alienated by his predecessor commences at the date of his accession to office.⁴

A right of adverse possession may be acquired against an idol or his *shebait* ⁵ or against any endowment.

jee v. Adoremoney Dassee (1909), 13 C. W. N. 805; *Radha Bullubh Chund v. Juggut Chunder Chowdree* (1826), 4 Ben. Sel. R. 151 (new edition, 192); *Prosunno Moyee Dossee v. Koonjo Beharee Chowdhree*, W. R. 1864, C. R. 157; *Juggessur Buttohyal v. Roodroo Narain Roy* (1869), 12 W. R. C. R. 299; *Tayyabunnessa Bibee v. Sham Kishore Roy (Kuwar)* (1871), 7 B. L. R. 621; 15 W. R. C. R. 228; *Prosunno Kumar Adhikari v. Saroda Prosunno Adhikari* (1895), 22 Calc. 989; *Narasimha Chari v. Gopala Ayyangar* (1905), 28 Mad. 391; *Devasikamoney Pandarasannadhi (Sreemuth) v. Palaniappa Chettiar* (1910), 34 Mad. 535.

Necessity was presumed where the land had been held over sixty years under a lease, *Chakalingam Pillai v. Mayandi Chettiar* (1896), 19 Mad. 485.

¹ See *Mahomed v. Ganapati* (1889),

13 Mad. 277; *Jamal Saheb v. Murgaya Swami* (1885), 10 Bom. 34.

² See *Abhiram Goswami v. Shyama Charan Nandi* (1909), 36 I. A. 148; 36 Calc. 1003; 14 C. W. N. 1; 11 Bom. L. R. 1234; *Jamal Saheb v. Murgaya Swami* (1885), 10 Bom. 34.

³ *Goluck Chunder Bose v. Rughoonath Sree Chunder Roy* (1872), 1 B. L. R. 337, note; 17 W. R. C. R. 44. ⁴ *Mahomed v. Ganapati* (1889), 13 Mad. 277; *Vedapuratti v. Vallabha* (1890), *ibid.* 402; *Sathianama Bharati v. Saravanabagi Ammal* (1894), 18 Mad. 266. See *Nilmony Singh v. Jagabandha Roy* (1896), 23 Calc. 536; *Gnasambanda Pandara Sannadhi v. Velu Pandaram* (1899), 27 I. A. 69; 23 Mad. 271; 4 C. W. N. 329; 2 Bom. L. R. 597 (hereditary office).

⁵ See *Damodar Das v. Lakhan Das (Adhikari)* (1910), 37 I. A. 147; 37 Calc. 885; 14 C. W. N. 889; 12 Bom. L. R. 632; *Pandurang Balaji v. Dnyance* (1911), 36 Bom. 135; 13 Bom. L. R. 1169.

Possession of *debutter* property which is adverse against some of the *shebaitis* is necessarily adverse against all of them.¹

Adverse possession during a previous office holder's time bars his successor.²

Debts of
previous
manager.

The manager may be sued as manager for debts lawfully contracted by his predecessor, although they were not expressly charged upon the endowed property.³

Decree binds
successor.

A decree untainted by fraud or collusion which is made in a suit by or against a *shebait* as representing the idol or against the head of a *mutt* as representing the *mutt* is binding on succeeding *shebaitis*⁴ or heads of the *mutt*, as the case may be.⁵

Attachment
of property.

Property belonging to an endowment may be attached or sold under a decree properly made against the trustee or manager as such,⁶ but it cannot be attached or sold in pursuance of a decree passed against the trustee or manager personally.⁷

Where it is so attached⁸ or sold⁹ the manager may assert the rights of the endowment by a claim or suit, as the case may be.

Devolution of Trust or Management.

Terms of
endowment.

Where the terms of the grant creating the endowment provide for the devolution of the trusteeship or managership they should be followed.¹⁰

¹ *Jnananjan Banerjee v. Adoremoney Dassee* (1909), 13 C. W. N. 805.

² *Chidambaran Chetti v. Minammal* (1898), 23 Mad. 439.

³ *Daivasikamani Pandara Sannidhi (Srimath) v. Noor Mahomed Routhan* (1907), 31 Mad. 47.

⁴ *Prosunno Kumari Debya v. Golab Chand Baboo* (1875), 2 I. A. 145; 14⁵ B. L. R. 450; 23 W. R. C. R. 253; S. C. in Court below (1873), 11 B. L. R. 332; *Ranjit Sinha Bahadur (Raja) v. Basanta Kumar Ghose* (1908), 12 C. W. N. 739; *Gora Chand Lurki v. Makhan Lal Chakravarty* (1907), 11 C. W. N. 489; *Krishna Kisore Chakravarti v. Sukha Sindhu Sanyal* (1906), 10 C. W. N. 1000; *Tulsidas Mahanta v. Bejoy Kishore Shome* (1901), 6 C. W. N. 178.

⁵ *Manikka Vasaka Desikar v. Bala gopala Krishna Chetty* (1906), 29 Mad. 553; *Subindra v. Budan* (1885), 9 Mad. 80.

⁶ *Pramada Nath Roy v. Poorna Chandra Roy* (1908), 35 Cal. 691; 12 C. W. N. 550.

⁷ *Bishen Chand Basawut v. Nudir Hossein (Syed)* (1887), 15 I. A. 1; 15 Cal. 329; *Ram Krishna Mahapatra v. Padma Charan Deb Goswami (Mohunt)* (1902), 6 C. W. N. 663.

⁸ *Jogendra Nath Sarkar v. Gobinda Chandra Dutt* (1908), 35 Cal. 364; 12 C. W. N. 310; *Bhojahari Pal v. Ram Lal Das* (1901), 6 C. W. N. 63.

⁹ *Amar Chand Kundu v. Nani Gopal Mukerjee* (1907), 12 C. W. N. 308; *Ram Krishna Mahapatra v. Padma Charan Deb Goswami (Mohunt)* (1902), 6 C. W. N. 663.

¹⁰ See *Sitapershad v. Thakur Dass* (1879), 5 C. L. R. 73; *Bishambhar Das v. Drigbijai Singh* (1905), 27 All. 581; 9 C. W. N. 914; *Ram Chunder Adhikaree v. Ram Jeebun Adhikaree* (1869), 12 W. R. C. R. 427.

For instance, a grant to a *gosavi* and his disciples in perpetual succession.¹

Where it was provided that the succession should be "*shishya shishya-nukrame*" (disciple following disciple), it was held that a disciple could succeed a co-disciple.²

In the absence of evidence of the endower having laid down Usage. a rule of succession, the usage which has been observed in the selection of a successor in the particular institution should be followed.³

"In determining who is to be entitled to succeed as *mohunt* in such a case as the present, the only law to be observed is to be found in custom and practice, which must be proved by testimony, and the claimant must show that he is entitled according to the custom to recover the office and the land and property belonging to it. This has been laid down by the Committee in several cases."⁴

The same principle is applicable to the *dharmakarta* ⁵ of a *devasthanam* or temple.⁶

In one case an unbroken usage for nineteen years was held conclusive evidence of a family arrangement for turns of management.⁷

In order to ascertain the practice of the endowment the practice of similar endowments may be referred to.

As to a temple belonging to the Ballavacharya Gossain sect, see *Mohan Lalji v. Madhusudan Lala*, [1910] 32 All. 461.

As to the appointment of *mohunts*, see *post*, pp. 539-541.

There may be an hereditary right of managership.

Hereditary right.

¹ *Khusalchand v. Mahadevgiri* (1875), 12 Bom. H. C. 214.

² *Gopal Chandra Chakrabarty v. Radharaman Das Babaji* (1911), 16 C. W. N. 108.

³ *Janoki Debi (Srimati) v. Sri Gopal Acharjia* (1882), 10 I. A. 32; 9 Calc. 766; 13 C. L. R. 30; *Greed-haree Doss v. Nundo Kishore Doss Mohunt* (1867), 11 M. I. A. 405, at p. 428 (see p. 421); 8 W. R. P. C. 25; *Muttu Ramalinga Setupati (Rajah) v. Perianayagum Pillai* (1874), 1 I. A. 209; *Vurmah Valia (Rajah) v. Vurmah Mutha (Ravi)* (1876), 4 I. A. 76; 1 Mad. 235, at p. 250; *Ramji Dass (Mahanth) v. Lachhu Dass* (1902), 7 C. W. N. 145; *Rangachariar v. Yegna Dikshatur* (1890), 13 Mad. 524,

at p. 534; *Sitapershad v. Thakur Dass* (1879), 5 C. L. R. 73; *Gajapati v. Bhagavan Das* (1891), 15 Mad. 44; *Basdeo v. Gharib Das* (1890), 13 All. 256.

⁴ *Genda Puri v. Chhatar Puri* (1886), 13 I. A. 100, at p. 105; 9 All. 1, at p. 8; *Ramji Dass (Mahanth) v. Lachhu Dass* (1902), 7 C. W. N. 145.

⁵ Manager.

⁶ *Ramalingam Pillai v. Vythilingam Pillai* (1893), 20 I. A. 150; 16 Mad. 490; *Appasami v. Nagappa* (1884), 7 Mad. 499.

⁷ *Ramanathan Chetti v. Murugappa Chetti* (1906), 33 I. A. 139; 29 Mad. 283; 10 C. W. N. 825.

Such right must be proved.¹ It may have been provided for in the grant, as is usual in the case of a private religious endowment,² or may be established by usage.

In providing for the succession by inheritance to the management of an endowment the rules laid down in the *Tagore* case,³ prohibiting the creation of estates of inheritance inconsistent with the general law of inheritance, apply.⁴

Where the right to manage a religious or charitable endowment, without any beneficial interest in the endowed properties, is vested in a joint Hindu family the senior male member of such a family is, until a partition is effected,⁵ entitled to exercise the right.⁶

In a family governed by the Mitakshara school of law, when the right of management of the *debutter* property belongs to the family, a member of the family becomes on birth entitled to be *shebait*.⁷

Females.

An hereditary priestly office apparently descends in default of males through females.⁸

For instances of hereditary trustees of religious endowments, see *Gnanasambanda Pandara Sannadhi v. Velu Pandaram*, [1899] 27 I. A. 69; 23 Mad. 1; 4 C. W. N. 329; 2 Bom. L. R. 597; *Nanabhai v. Shriman Goswami Girdhariji* (1888), 12 Bom. 331; *Annasami Pillai v. Ramakrishna Mudaliar*, [1900] 24 Mad. 219.

Section 63 of the Madras Court of Wards Act (I. (Mad. C.) of 1902) is as follows :—

Powers of Court in regard to religious endowments of which ward is hereditary trustee or manager.

If a ward is the hereditary trustee or manager of a temple, mosque, or other religious establishment or endowment, the Court, notwithstanding anything contained in s. 22 of the Religious Endowments Act, 1863,⁹ may make such arrangements as it thinks fit for the discharge, during the wardship, of the ward's duties as trustee or manager, provided that for the direct and personal management of the religious affairs of any such institution, establishment, or endowment the Court shall appoint suitable persons other than officers of Government, and that the Court shall, as far as possible, restrict superintendence to the preservation of the property belonging to the institution, establishment, or endowment.

Powers of manager as to appointment.

A *mohunt* or other head of an endowment cannot

¹ *Appasami v. Nagappa* (1884), 7 Bom. L. R. 597. Mad. 499.

² *Collector of Moorsheadabad v. Shibessuree (Ranee)* (1872), 11 B. L. R. 86, at p. 116; 18 W. R. C. R. 226, at p. 228.

³ *Juttendromohun Tagore v. Ganendro Mohun Tagore* (1872), I. A. Sup. Vol. 47, at p. 65; 9 B. L. R. 377, at pp. 394, 395; 18 W. R. C. R. 359, at p. 364, ante. p. 506.

⁴ *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* (1899), 27 I. A. 69, at p. 78; 2 Mad. 271, at p. 281; 4 C. W. N. 329, at p. 332; 2

⁵ As to partition, see *post*, p. 543.

⁶ *Thandavaroya Pillai v. Shunmugam Pillai* (1908), 32 Mad. 167. See *Purappavanalingam Chetti v. Nullasivan Chetti* (1863), 1 Mad. H. C. 415, at p. 417.

⁷ *Ramchandra Panda v. Ram Krishna Mahapatra* (1906), 33 Calc. 507.

⁸ *Sitarambhat v. Sitaram Ganesh* (1869), 6 Bom. H. C. A. C. 250; see ante, p. 526.

⁹ XX. of 1863, *post*, p. 563.

alter the succession,¹ nor can he provide for the succession after the person appointed by him.²

In the absence of express provision in the grant, or of ^{Right of founder.} usage, or in the case of omission by the person entitled to nominate to the office the right to nominate a manager reverts to the founder or his heirs.³

The right of management of family properties devoted to charities ordinarily descends to the heirs of the donor except in the few cases where the office is descensible to a single heir.⁴

When the family of the *shebait* appointed by the founder dies out, the *shebaitship* would revert to the family of the original grantor.⁵

A right as manager or to appoint a manager may be acquired ^{Prescriptive right.} by prescription.⁶

The practice as to the appointment of *mohunts* or other ^{Appointment of mohunt.} heads of *mutts* or *mutlams* (monasteries) varies in accordance with the custom of the particular institution, which must be proved by evidence in each case.⁷

¹ *Ramji Dass (Mahanth) v. Lachhu Dass* (1902), 7 C. W. N. 145; *Rumun Doss (Mohant) v. Ashbul Doss (Mohunt)* (1864), 1 W. R. C. R. 160.

² *Greedharee Doss v. Nundkishore Dutt Mohunt* (1863), Marsh, 573; 2 Hay, 633; approved on appeal (1867), 11 M. I. A. 405, at p. 428; 8 W. R. P. C. 25.

³ *Greedhareejee (Gossamee Sree) v. Rumanolljee Gossamee* (1889), 16 I. A. 137; 17 Calc. 3 (public religious endowment); *Sheoratan Kunwari v. Ram Pargash* (1896), 18 All. 227 (public temple); *Chandranath Chakrabarti v. Jadabendra Chakrabarti* (1906), 28 All. 689 (ditto); *Mohan Lalji v. Madhveadan Lala* (1910), 32 All. 461 (ditto); *Sheo Prasad v. Aya Ram* (1907), 29 All. 663 (Sikh religious endowment); *Jai Bansi Kunwar (Mussamat) v. Chattar Dhari Sing* (1870), 5 B. L. R. 181; S. C. *Peet Koonwur v. Chuttur Dharee Singh* (1870), 13 W. R. C. R. 396 (temple); *Hori Dasi Debi v. Secretary of State* (1879), 5 Calc. 229; 4 C. L. R. 77; S. C. on appeal *Ram Lal Mookerjee v. Secretary of State* (1881), 8 I. A. 46; 7 Calc. 304; 10 C. L. R. 349 (charitable endowment); *Jagannath*

Prasad Gupta v. Runjit Singh (1897), 25 Calc. 355 (endowment for idol); *Jagadindra Nath Roy Bahadur (Maharajah) v. Hemanta Kumari Debi (Rani)* (1904), 31 I. A. 203, at p. 208; 32 Calc. 129, at p. 399; 8 C. W. N. 809, at pp. 818, 819; 6 Bom. L. R. 765.

⁴ *Sethuramaswamiar v. Meruswamiar* (1909), 34 Mad. 470.

⁵ *Madhub Chandra Bera v. Sarat Kumari Debi (Srimati Rani)* (1910), 15 C. W. N. 126; *Pital Das Babaji v. Protap Chandra Sarma* (1909), 11 C. L. J. 2.

⁶ *Annasami Pillai v. Ramakrishna Mudaliar* (1900), 24 Mad. 219; *Ramanathan Chetty v. Muragappa Chetty* (1903), 27 Mad. 192; S. C. on appeal (1906), 33 I. A. 139; 29 Mad. 283; 10 C. W. N. 824; 8 Bom. L. R. 498; see *Dumodar Das v. Lakkan Das (Adhikari)* (1910), 37 I. A. 147; 37 Calc. 885; 14 C. W. N. 889; 12 Bom. L. R. 632.

⁷ *Greedharee Doss v. Nundkissore Doss Mohunt* (1867), 11 M. I. A. 405; 8 W. R. P. C. 25; *Genda Puri v. Chatar Puri* (1886), 13 I. A. 100; 9 All. 1; *Ramalingam Pillai v. Vythilingam Pillai* (1893), 16 Mad. 490; *Ramji Dass (Mahanth) v. Lachhu Dass* (1902), 7 C. W. N. 145.

Usually one of the *chelas*, i.e., persons initiated by the deceased or retiring *mohunt*, would be selected,¹ by act *inter vivos* or by will² by the head of the mutt, such appointment being generally subject to confirmation by the *mohunts* of neighbouring *mutts* of the same sect.³ On failure of such appointment the appointment would usually be made by such neighbouring *mohunts*.⁴

The ordinary rule is that among the *Sanyasis* generally no *chela* has a right as such to succeed to the property of the deceased *guru*; he must be nominated by his *guru*, such nomination being generally confirmed by the *mohunts* of the order, or in default of such appointment, he must be elected by the *mohunts* and principal persons of the sect in the neighbourhood. But this is not a universal rule, and in some cases, according to custom, the principal *chela* succeeds as of right even without such appointment or formal election; but apparently even then an election or a recognition by members of the sect is necessary.⁵

In one case it was said, "The ordinary rule is that the *maths* of the same sect in a district, or *maths* having a common origin, are associated together, the *mohunts* of these acknowledging one of their number (who is for some reason pre-eminent) as a head; and on the occasion of the death of one the others assemble to elect a successor out of the *chelas* or disciples of the deceased, if possible; or if there be none of them qualified, then from the *chelas* of another *mohunt*. After the election the chosen disciple is installed on the *guddi* of his predecessor with much ceremony."⁶

¹ See *Gunes Gir v. Amrao Gir* (1807), 1 Ben. Sel. R. 218 (2nd ed., 291); *Ramji Dass (Mahanth) v. Lachhu Dass* (1902), 7 C. W. N. 145; *Sheoproskash Dass (Mohunt) v. Joyram Dass* (1866), 5 W. R. M. A. 57.

² Probate of such will is not necessary, *Baisnav Charan Das Bairagi v. Kishore Dass Mohanta* (1911), 15 C. W. N. 1014.

³ *Ramji Dass (Mahanth) v. Lachhu Das* (1902), 7 C. W. N. 145; *Land Agents of Zillah Hoogly v. Kishnanund Dundee*, Ben. S. D. A. 1848, p. 253; *Greedharee Dass v. Nundokissore Dass Mohunt* (1867), 11 M. I. A. 405; 8 W. R. P. C. 25; *Trimbakpuri Guru Sitalpuri v. Gangabai* (1887), 11 Bom. 514; *Ramalingam Pillai v. Vythilingam Pillai* (1893), 20 I. A. 150; 16 Mad. 490; *Madho Das v. Kamta Das* (1878), 1 All. 519; *Bama Nooj Dass (Mohunt) v. Debraj Dass (Mohunt)* (1839), 6 Ben. Sel. R. 262 (new edition, 328).

⁴ See *Gunes Gir v. Amrao Gir* (1807), 1 Ben. Sel. R. (2nd ed., 291); *Dhunsing Gir v. Mya Gir* (1806), 1 Ben. Sel. R. 153 (2nd ed., 202); *Ramrutun Das*

v. Bunmalee Das (1806), 1 Ben. Sel. R. 170 (2nd ed., 202); *Narain Das v. Brindabun Das* (1815), 2 Ben. Sel. R. 151 (new edition, 192); *Madho Das v. Kamta Das* (1878), 1 All. 539. The Court of Sudder Dewany Adalat in Bengal ordered an assembly of *mohunts* to be convened to determine a right of succession (*Surubanund Purbut v. Deo Sing Purbut* (1810), 1 Ben. Sel. R. 296 (2nd ed., 396), and to instal the person in whom the right might be vested (*Ganga Das v. Taluk Das* (1810), 1 Ben. Sel. R. 309 (2nd ed., 414). Such procedure is scarcely possible at the present time.

⁵ *Ramdhan Puri (Gossain) v. Dalmir Puri (Gossain)* (1909), 14 C. W. N. 191; see *Gopal Dass (Mohunt) v. Kerparam Dass (Mohunt)*, Ben. S. D. A. 1850, p. 250.

⁶ *Dowlut Geer (Gossain) v. Bissessur Geer* (1873), 19 W. R. C. R. 215; H. H. Wilson's "Religion of Hindus," p. 51; *Narain Das v. Brindabun Das* (1815), 1 Ben. Sel. R. 151 (new edition, 192).

In one case ¹ the mohunt's power to appoint his successor was limited to members of the *Adhinam*,² a disciple of which founded the *mutt* in question.

There is authority that in the absence of a duly appointed *mohunt* the disciples of a *mutt* cannot sue for a declaration that a person claiming the office has not been duly appointed,³ but it is submitted that the refusal of relief in such a suit might compel an appointment which might afterwards turn out to be infructuous.

Except where he is justified by the terms of the endowment Condition. in making an appointment, a *mohunt* has no power to attach any condition to the interest to be enjoyed by his appointee.⁴

Alienation.

Except it be justified by the terms of the endowment or by use,⁵ a right of management or a trust or a power of appointment of a trustee or manager,⁶ or an office attached to a temple or other endowment,⁷ cannot be alienated by the holder.

Alienation of management or trust or office.

No proof of usage will justify an alienation for the pecuniary benefit of the alienor,⁸ or for the purpose of altering the form of worship.⁹

A turn of worship is not ordinarily alienable.¹⁰

¹ *Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran* (1887), 10 Mad. 375.

² A religious institution.

³ *Srinivasa Swami v. Ramanuja Chariar* (1890), 22 Mad. 117. See, however, *post*, p. 546.

⁴ *Greedharee Doss v. Nundkishore Dutt Mohunt* (1863), Marsh. 573; 2 Hay, 633; affirmed on appeal, 11 M. I. A. 428; 8 W. R. P. C. 25. See *Gajapati v. Bhagavan Doss* (1891), 15 Mad. 44, at p. 45.

⁵ See *Rajaram v. Ganesh* (1898), 23 Bom. 131; *Rangasami v. Ranga*, (1892), 16 Mad. 146.

⁶ *Gnasambanda Pandara Sannadhi v. Velu Pandaram* (1899), 27 I. A. 69; 2 Mad. 271; 4 C. W. N. 329; 2 Bom. L. R. 597; *Vurmah Valia (Rajah) v. Vurmah Mutha (Ravi)* (1876), 4 I. A. 76; 1 Mad. 235; *Rajeshwar Mullick v. Gopeshwar Mullick* (1907), 34 Calc. 828; 11 C. W. N. 782; S. C. 35 Calc. 226; 12 C. W. N. 323; *Rup Narain Singh v. Junko Bye* (1878), 3 C. L. B. 112; *Rama Varma Tambaran v. Raman Nayar* (1882), 5 Mad. 89; *Subbarayudu v. Kotayya* (1892), 15 Mad. 369; *Kannan v. Nilakandan*

(1884), 7 Mad. 337; *Alagappa Mudaliar v. Sivarasundara Mudaliar*, 19 Mad. 211.

⁷ *Lakshmanawasmis Naidu v. Ranganamma* (1902), 26 Mad. 31; *Keyake-Ilata Kotel Kannu v. Yadattil Vellayangot* (1868), 3 Mad. H. C. 380; *Narayana v. Ranga* (1891), 15 Mad. 183; *Mallika Dasi (Srimati) v. Ratanmani Chakervarti*, 1 C. W. N. 493.

⁸ *Vurmah Valia (Rajah) v. Vurmah Mutha* (1876), 4 I. A. 76; 1 Mad. 235; *Narasimha Thatta Acharya v. Anantha Bhatta* (1881), 4 Mad. 391; *Kuppa Gurukul v. Dorasami Gurukul* (1882), 6 Mad. 76.

⁹ *Venkatarayar v. Srinivasa Ayyangar* (1872), 7 Mad. H. C. 32.

¹⁰ *Rajeshwar Mullick v. Gopeshwar Mullick* (1907), 34 Calc. 818; 11 C. W. N. 782; *Ukoor Doss v. Chunder Sekur Doss* (1865), 3 W. R. C. R. 152. See *Durga Bibi v. Chanchal Ram* (1881), 4 All. 81. In *Jati Kar v. Mukunda Bashi* (1911), 16 C. W. N. 129, effect was given to a transfer which has been acted upon for twenty-five years.

Under special circumstances the alienation of religious offices and rights of worship to persons standing in the line of succession and capable of performing the worship and other functions connected with it will be upheld if there be no impropriety in the transaction.¹ Such alienation would frequently amount to nothing more than a renunciation of the right.²

An assignment for the purpose of carrying on the *debsheba* ³ and making provision therefor has been upheld.⁴

A transfer to a *de jure* manager by a *de facto* manager who has acquired a right to the property by prescription will be upheld.⁵

A right to set aside an assignment may be barred by the law of limitation.⁶

Limits of
alienation.

When a right of management or an office connected with an endowment is alienable, it can only be alienated in such a way that the trust may be carried out.⁷

Revocation of
endowment
of idol.

An endowment in favour of a family idol is not so permanent as a public endowment.⁸ Provided that the concurrence of all the members of the family can be obtained, the idol and its property can be transferred to another family for the purpose of carrying on the worship,⁹ and there is authority that with the consent of the whole family the dedicated property can be converted into secular property and appropriated by the members of the family.¹⁰

Attachment.

A right of management or of trusteeship,¹¹ an office connected with a temple or other endowment,¹² or a right of

¹ *Mancharam v. Pranshankar* (1882), 6 Bom. 298; *Sitarambhat v. Sitaram Ganesh* (1869), 6 Bom. H. C. 250; *Baroda Charan Dutt v. Hemlata Dassi* (1908), 13 C. W. N. 642; *Nirod Mohini Dassi v. Shibodas Pal Dewisi* (1909), 36 Calc. 975; 13 C. W. N. 1084. See, however, *Narayana v. Ranga* (1891), 15 Mad. 183.

² See Mayne's "Hindu Law," 7th edition, p. 581.

³ The worship of the deity.

⁴ *Jadubindu Odhikaree v. Lokanauth Gere* (1863), Marsh. 303; 2 Hay, 160. See ante, p. 593; *Khetterchunder Ghose v. Hari Das Bundopadhy* (1890), 17 Calc. 557.

⁵ See *Annasami Pillay v. Ramakrishna Mudaliar* (1900), 24 Mad. 219.

⁶ See *Kannan v. Nilakandan* (1884), 1 Mad. 337.

⁷ See ante, p. 528.

⁸ Ante, pp. 518, 519.

⁹ *Khetterchunder Ghose v. Hari Das Bundopadhy* (1890), 17 Calc. 557, followed in *Baroda Charan Dutt v. Hemlata Dassi* (1908), 13 C. W. N. 242.

¹⁰ *Doorganath Roy (Konwar) v. Ram Chunder Sen* (1876), 4 I. A. 52, at p. 58; 2 Calc. 341, at p. 347; *Gobinda Kumar Roy Chowdhury v. Debendra Kumar Roy Chowdhury* (1907), 12 C. W. N. 98. See *Madhub Chandra Bera v. Sarat Kumari Devi (Srimati Rani)* (1910), 15 C. W. N. 126; *Dharma Das Mandol v. Gosta Behary Mandol* (1911), 16 C. W. N. 29.

¹¹ *Durga Bibi v. Chanchal Ram* (1881), 4 All. 81; *Juggurnath Roy Chowdhury v. Kishen Pershad Surmah* (1867), 7 W. R. C. R. 266.

¹² *Rajaram v. Ganesh* (1898), 23 Bom. 131; *Dubo Misser v. Srinibas Misser* (1870), 5 B. L. R. 617; 14

worship,¹ or the right of an idol to receive voluntary offerings,² cannot be attached or sold in execution of a decree.³

A right to the surplus profits of the *sheba* cannot be attached if the amount be not ascertained.⁴

There is no objection to the sale of the right, title, and interest of a servant of the temple in land belonging to the temple which he holds as remuneration for his services.⁵

Public endowments and religious offices are naturally in-
divisible, though modern custom has sanctioned a departure
in respect of allowing the parties entitled to share to officiate
by turns, and of allowing alienation within certain restrictions.⁶ Partition.

A right to manage a family idol, a temple, or religious
endowment, when such right belongs to a coparcenary, may be
partitioned by allotting to the coparceners an alternate recurring
period of worship or holding in proportion to their shares, if
the nature of the endowment renders it possible.⁷ Mode of
allotment.

The Court will give effect to a family arrangement for the due execution of the service of the temple in turn or in some settled order or sequence.⁸ In one case, where there were two idols belonging to the family, an arrangement by which one of the heirs took one of the idols and the property

W. R. C. R. 409; *Govind Lakshman Joshi v. Ramkrishna Hari Joshi* (1887), 12 Bom. 366; *Durga Bibi v. Chanchal Ram* (1881), 4 All. 81.

¹ *Kalicharan Gir Gossain v. Bangshi Mohan Das Baboo* (1871), 6 B. L. R. 727; 15 W. R. 339.

² *Shoilojanund Ojha v. Peary Charan Dey* (1902), 29 Calc. 470; 6 C. W. N. 728.

³ Acts V. of 1908 (Civil Procedure Code), s. 60; XIV. of 1882 (Civil Procedure Code), s. 266.

⁴ *Juggurnath Roy Chowdhry v. Kishen Pershad Surmah* (1867), 7 W. R. C. R. 266.

⁵ *Lollikar v. Wagle* (1882), 6 Bom. 596.

⁶ *Trimbak v. Lakshman* (1895), 20 Bom. 495, at p. 501. See ante, p. 542.

⁷ *Sethuramaswamiar v. Meruswamiar* (1909), 34 Mad. 470; *Rajeshwar Mullick v. Gopeshwar Mullick* (1907), 34 Calc. 828; 11 C. W. N. 782; *Man-*

charam v. Pranshankar (1882), 6 Bom. 298; *Mitta Kunth Audhicarry v. Neerunjun Audhicarry* (1874), 14 B. L. R. 166; 22 W. R. C. R. 437; *Anund Moyee Chowdhraïn v. Boykantnath Roy* (1867), 8 W. R. C. R. 193; *Bhattacharya's "Law of the Joint Hindu Family,"* pp. 452, 453. As to the law of limitation, see Act IX. of 1908, Sched. I, Art. 131; *Eshan Chunder Roy v. Monmohini Dassi* (1878), 4 Calc. 683; *Gopee Kissen Gossamy v. Thakoor Doss Gossamy* (1882), 8 Calc. 807; 10 C. L. R. 439; *Gaur Mohan Chowdhry v. Madan Mohan Chowdhry* (1871), 6 B. L. R. 352; 15 W. R. C. R. 29; *Nubkissen Mitter v. Hurrishunder Mitter* (1818), 2 Morley's Dig. 146.

⁸ *Ramanathan Chetti v. Murugapa Chetti* (1906), 33 I. A. 139; 29 Mad. 283; 10 C. W. N. 824; 8 Bom. L. R. 998.

endowed for the worship thereof, and the other took the other idol and property, was approved by the Court,¹

In a Bombay case ² the High Court on a partition gave the custody of the family idol and of the property appertaining thereto to the senior member of the family, reserving to the other members a right of access ; but it is ordinarily the practice to allot to each of the coparceners the worship and custody in "palas" or turns.³ It is submitted that the latter practice is the right one.

As to the partition of places of worship and sacrifice and property dedicated to an idol or to other religious or charitable purposes, see *ante*, p. 327.

Suits.

Suit for breach
of trust.

Persons interested in a religious or charitable endowment, such as worshippers ⁴ or devotees of an idol or members of the founder's family,⁵ are entitled to bring a suit complaining of a breach of trust with reference to the funds or property belonging to the endowment,⁶ or insisting upon the worship being properly performed,⁷ or the trust carried out.⁸

¹ *Elder widow of Raja Chutter Sein v. Younger widow of Raja Chutter Sein* (1807), 1 Ben. Sel. R. 180 (new edition, 239).

² *Damodardas Maneklal v. Uttamram Maneklal* (1892), 17 Bom. 271, at p. 288.

³ See *Mitta Kunth Audhicarry v. Neerunjun Audhicarry* (1874), 14 B. L. R. 166; 22 W. R. C. R. 437; *Anund Moyee Chowdhraïn v. Boykantnath Roy* (1867), 8 W. R. C. R. 193. The refusal to deliver up the idol to a person entitled to a turn gives a right of suit; *Debendro Nath Mullick v. Odit Churn Mullick* (1878), 3 Calc. 390; *Anund Moyee Chowdhraïn v. Boykantnath Roy* (1867), 8 W. R. C. R. 193; *Gaur Mohan Chowdhry v. Madan Mohun Chowdhry* (1871), 6 B. L. R. 352; 15 W. R. C. R. 29; *Eshan Chunder Roy v. Monmohini Dassi* (1878), 4 Calc. 683; *Gopee Kishen Gossamy v. Thakoordass Gossamy* (1882), 8 Calc. 807; 10 C. L. R. 439. K. K. Bhattacharya's "Law of Joint Hindu Family," p. 462.

⁴ *Sajedur Raja Chowdhuri v. Gour Mohun Das Baishnav* (1897), 24 Calc.

418; *Jugal Kishore v. Lakshmandas Raghunathdas* (1899), 23 Bom. 657; *Chintaman Bajaji Des v. Dhondo Ganes Dev* (1888), 15 Bom. 612. This will include priests worshipping on behalf of pilgrims at a shrine; *Manohar Ganes Tambekar v. Lakhmiram Govindram* (1887), 12 Bom. 247; S. C. on appeal *Chotalal Lakhmiram v. Manohar Ganes Tambekar* (1899), 26 I. A. 199; 24 Bom. 50; 4 C. W. N. 23; 2 Bom. L. R. 516.

⁵ *Chintaman Bajaji Dev v. Dhondo Ganes Dev* (1888), 15 Bom. 612.

⁶ *Radhabai v. Chinmaji* (1878), 3 Bomt. 27. See *Sathappayyar v. Periasami* (1890), 14 Mad. 1.

⁷ See *Dhadphale v. Gurav* (1881), 6 Bom. 122; *Thackersey Dewraj v. Hurbhum Nursey* (1883), 8 Bom. 432.

⁸ *Ram Narain Singh v. Ramgor Paurey* (1874), 23 W. R. C. R. 76; *Panchcouri Mull v. Chumroolall* (1878), 3 Calc. 563; 2 C. L. R. 121; *Brejomohun Doss v. Hurrololl Doss* (1880), 5 Calc. 700; 6 C. L. R. 58; *Hemangini Dasi v. Nobin Chand Ghose* (1882), 8 Calc. 788; 11 C. L. R. 370.

They can also sue for a declaration that the *mohunt* or *shebait* or other manager of the endowment has by his mal-administration disqualified himself from holding the office.¹

The plaintiff's right to an account in such a suit depends upon his Account. pleading and proving a distinct breach of trust.²

Section 92 of the Civil Procedure Code ³ enacts as follows :—

“(1) In the case of any alleged breach of any express or constructive trust created for public purposes ⁴ of a charitable or religious nature, or where the direction of the Court is deemed necessary ⁵ for the administration of any such trust, the Advocate-General, or two or more persons ⁶ having an interest in the trust ⁷ and having obtained ⁸ the consent in writing of the Advocate-General ⁹ may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

“(a) removing any trustee ; ¹⁰

Suit with respect to public endowments.

¹ See *Mohun Dass v. Lutchmun Dass* (1880), 6 Calc. 11; 6 C. L. R. 265; *Thackersey Dewraj v. Hurbhum Nursey* (1883), 8 Bom. 432; *Sathappayar v. Periasami* (1890), 14 Mad. 1; *Chintaman Bajaji Dev v. Dhondo Ganesh Dev* (1888), 15 Bom. 612.

² *Brojomohun Doss v. Hurroldoll Doss* (1880), 5 Calc. 700; 6 C. L. R. 58.

³ Act V. of 1908. This section re-enacts with some alteration, s. 539 of Act XIV. of 1882.

⁴ *Sathappayar v. Periasami* (1890), 14 Mad. 1; *Jugalkishore v. Lakshmandas Raghunathdas* (1899), 23 Bom. 659. As to what is a public trust, see *post*, p. 553.

⁵ See *Budree Das Mukim v. Chooni Lal Johurry* (1906), 33 Calc. 789, at p. 809; 10 C. W. N. 581, at p. 590.

⁶ A suit instituted by one plaintiff cannot be put right by the addition of another plaintiff, *Darves Haji Mahomed v. Jainudin* (1906), 30 Bom. 603; 8 Bom. L. R. 751.

⁷ *Sajedur Raja Chowdhuri v. Gour Mohun Das Baishnav* (1897), 24 Calc. 418; *Jugalkishore v. Lakshmandas Raghunathdas* (1899), 23 Bom. 659; *Manohar Ganesh Tambekar v. Lakshmiram Govindram* (1887), 12 Bom. 249; S. C. on appeal *Chotalal Lakshmiram v. Manohar Ganesh Tambekar* (1899),

26 I. A. 199; 24 Bom. 50; 4 C. W. N. 23; 2 Bom. L. R. 516; *Chintaman Bajaji Dev v. Dhondo Ganesh Dev* (1888), 15 Bom. 612.

⁸ Consent after the institution of the suit is not sufficient, *Gopal Dei v. Kanno Dei* (1903), 26 All. 162, differing from *Ramayyengar v. Krishnayyengar* (1886), 10 Mad. 185.

⁹ The consent must authorize the persons by name, *Gopal Dei v. Kanno Dei* (1903), 26 All. 162, and cannot include matters outside the terms of the consent, *Husein Miyan (Sayad) v. Collector of Kaira* (1895), 21 Bom. 257.

¹⁰ *Sajedur Raja Chowdhuri v. Gour Mohun Das Baishnav* (1897), 24 Calc. 418. See *Damodhar Bhat v. Bhogilal* (1899), 24 Bom. 45. This applies to a *de facto* as well as to a *de jure* trustee, see *Budree Das Mukim v. Chooni Lal Johurry* (1906), 33 Calc. 789, at pp. 805, 806; 10 C. W. N. 581, at pp. 587, 589; and the fact that the *de jure* trustee has lost his right by the laws of limitation does not prevent a suit, *Lakshmandas Raghunathdas v. Jugalkishore* (1896), 22 Bom. 216. Where the alienation of property is the ground of removal it is not necessary to make the alienee a party, *Huseini Begum v. Collector of Moradabad* (1897), 20 All. 46.

- "(b) appointing a new trustee ;¹
- "(c) vesting any property in a trustee ;
- "(d) directing accounts and enquiries ;²
- "(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust ;
- "(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged, or exchanged ;
- "(g) settling a scheme ;³ or
- "(h) granting such further or other relief as the nature of the case may require.⁴

"(2) Save as provided by the Religious Endowments Act, 1863,⁵ no suit claiming any of the reliefs specified in sub-s. (1) shall be instituted in respect of any such trust as is therein referred to, except in conformity with the provisions of that sub-section."⁶

This last provision disposes of the decisions which held that the corresponding provisions of the previous codes of civil procedure were permissive and not mandatory.

Object of provisions.

Referring to the corresponding section of the previous Code of Civil Procedure,⁷ the Bengal High Court said,⁸ "The real object of the special provisions of s. 539 seems to us to be clear. Persons interested in any trust were, if they would all join, always competent to maintain a suit against any trustee for his removal for breach of trust ; but where the joining of all of them was inconvenient or impracticable, it was considered desirable that some of them might sue without joining the others, provided they obtained the consent of the Advocate-General or of the Collector of the district ; and this condition was imposed to prevent an indefinite number of reckless and harassing suits being brought against trustees by different persons interested in the trust. Where this condition is fulfilled and the risk of harassing suits being brought against trustees is thus guarded against, there is no reason why suits brought under the section should be restricted in any other way."

¹ This includes the case where the defendant is not the lawful trustee, and the trusteeship is therefore vacant, see *Neti Rama Jogiah v. Venkatacharulu* (1902), 26 Mad. 450. See, however, *Srinivasa Swami v. Ramanuja Chariar* (1890), 22 Mad. 117, ante, p. 541. It is not necessary to claim consequential relief (Act I. of 1877, s. 42), *Rama Jogiah v. Venkatacharulu* (1902), 26 Mad. 450. New or additional trustees may be appointed, although such appointment may not be in conformity with the original constitution of the trust, *Prayag Doss Ji Varu Mahant v. Tirumala Srirangacharlavaru* (1905), 28 Mad. 319.

² See *Ghazaffar Husain Khan v. Yawar Husain* (1905), 28 All. 112.

³ The scheme is liable to alteration. *Prayag Doss Ji Varu Mahant v. Tirumala Srirangacharlavaru* (1905), 28 Mad. 319; *Damodarbhat v. Bhogilal Karsondas* (1899), 24 Bom. 45.

⁴ See *Jamal-uddin v. Muftaba Husain* (1903), 25 All. 631, at p. 635; *Budree Das Mukim v. Chooni Lal Johurry* (1906), 33 Calc. 789, at p. 810; 10 C. W. N. 581, at p. 591.

⁵ Act XX. of 1863, post, pp. 553 et seq.

⁶ See *Lutifunnissa Bibi v. Nazirun Bibi* (1884), 11 Calc. 33; *Wajid Ali Shah v. Dianat-ul-lah Beg* (1885), 8 All. 31.

⁷ Act XIV. of 1882.

⁸ *Sajedur Raja Chowdhuri v. Gour Mohun Das Baishnav* (1897), 24 Calc. 418, at p. 425.

For a summary of the results of s. 92 of the Civil Procedure Code and of the Religious Endowments Act, see Mullah's "Code of Civil Procedure," 3rd ed., p. 207.

A suit for one of the above purposes, but including a claim for the recovery of trust property from the hands of a third party to whom it has been improperly alienated is within this section.¹

An action lies against the committee of management of a temple receiving annually from Government a sum of money for the purpose of religious worship by the Advocate-General acting on behalf of the public to compel them to a due execution of their particular acts of duty.²

It has been held that this section has no application to—

(a) A suit for a declaration that the plaintiff is a trustee.³

(b) A suit for a declaration of a right of management which is actually being exercised by the plaintiff.⁴

(c) A suit for a declaration of the right of the plaintiff to appoint a manager of a *mutt*.⁵

(d) A suit between two private parties claiming certain rights as managers.⁶

(e) A suit for the declaration of the existence of a trust.⁷

(f) A suit by worshippers at a temple for a declaration that the election of certain persons to the office of *dharmakarta* is void.⁸

(g) Suits brought not to establish a public right, but to remedy a particular infringement of an individual right.¹⁰

It has been held that suits not brought for any of the purposes specified in the section, "being merely claims by trustees against persons who are strangers to the trust and who set up a title hostile thereto, such as alienees and mere trespassers holding adversely thereto, are not within the section."¹¹

Cases to which section has no application.

¹ *Sajedur Raja Chowdhuri v. Gour Mohun Das Baishnav* (1897), 24 Calc. 418, followed in *Ghazaffar Husain Khan v. Yawar Husain* (1905), 28 All. 112. As to whether a separate suit may be necessary to obtain possession, see the last-mentioned case, and *Neti Rama Jogiah v. Venkatacharulu* (1902), 26 Mad. 450.

² *Trimbak Gopal Parichak v. Krishnarao Pandurang* (1909), 33 Bom. 387. See *Attorney General v. Brodie* (1846), 4 M. L. A. 191; *Mayor of Lyons v. Advocate-General of Bengal* (1875), 3 L. A. 32; 1 Calc. 303; 26 W. R. C. R. 1.

³ *Miya v. Bava Sahab Santi Miya (Sayed)* (1896), 22 Bom. 496; *Budree Das Mukim v. Chooni Lal Johurry* (1906), 33 Calc. 789, at p. 810; 10 C. W. N. 583, at p. 590.

⁴ *Navroji Maneeki Wadia v. Dastur Khwasadi Mancharji* (1903), 28 Bom. 20.

⁵ *Gryana Sambandha Pandara San-nadhi v. Kandasami Tambiran* (1887), 10 Mad. 375.

⁶ *Manijan Bibee v. Khadem Hossein* (1904), 32 Calc. 273.

⁷ *Jamal-uddin v. Muftaba Husain* (1903), 25 All. 631, followed in *Dasondhay v. Muhammad Abu Nasar* (1911), 33 All. 660.

⁸ *Manager.*

⁹ *Srinivasu Chariar v. Raghava Chariar* (1897), 23 Mad. 28.

¹⁰ *Budree Das Mukim v. Chooni Lal Johurry* (1906), 33 Calc. 789, at p. 807; 10 C. W. N. 581, at p. 589; *Jawahra v. Akbar Husain* (1884), 7 All. 178, differing from *Jan Ali v. Ramnath Mundul* (1882), 8 Calc. 32; 9 C. L. R. 43, see *Lutifunnissa Bibi v. Nazirun Bibi* (1885), 11 Calc. 33; *Zafaryab Ali v. Bakhtawar Singh* (1883), 5 All. 497; *Mohiuddin v. Sayiduddin* (1893), 20 Calc. 810.

¹¹ *Budree Das Mukim v. Chooni Lal Johurry* (1906), 33 Calc. 789, at

Appeal.	A relator who is not a party to the suit cannot appeal. ¹
Execution of scheme.	The directions in a scheme framed under this section may be enforced in execution on application by persons interested. ²
Powers of collectors.	The powers conferred upon the Advocate-General by the above section may, outside the Presidency towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf. ³
Duty of Advocate-General or Collector.	The Advocate-General, or Collector, as the case may be, in giving his consent to the institution of a suit must exercise his judgment in the matter, and see not only whether the persons suing are persons having an interest in the trust, but also whether the trust is a public trust of the kind contemplated by the section, and whether there are <i>prima facie</i> grounds for thinking that there has been a breach of trust. Where the form of the permission shows that he has omitted to exercise his judgment, the omission is a mere irregularity. ⁴ There must be some dispute in existence of such a public nature that the intervention of the Advocate-General or Collector is necessary to decide if and by whom a suit should be brought to establish public rights. ⁵
Removal of trustee, etc.	When a <i>shebait</i> , <i>mohunt</i> , trustee, or other manager has by breach of trust or otherwise shown himself to be incompetent to carry on the duties of the trust, the Court can remove him. ⁶

A trustee who does not keep proper accounts, misappropriates moneys and makes false claims against the trust properties should be removed.⁷

A *bonâ fide* claim to property which actually belongs to the endowment is not by itself ground for removing a manager ;⁸ but an assertion of a right to treat the property as his private estate might justify his removal.⁹

The non-performance of customary religious ceremonies may amount to a breach of trust if funds, whether from voluntary contributions or otherwise, are available.¹⁰

A party holding land assigned for the support of an idol subject to

p. 805 ; 10 C. W. N. 581, at p. 587 ; *Srinivasa Ayyangar v. Srinivasa Swami* (1892), 16 Mad. 31 ; *Muhamad Abdullah Khan v. Kallu* (1899), 21 All. 187 ; *Ghelabai Gavrishankar v. Uderam Icharam* (1911), 36 Bom. 29 ; 13 Bom. L. R. 989 ; see *Ghazaffar Husain Khan v. Yawar Husain* (1905), 28 All. 112 ; *Hassan (Kazi) v. Sagun Bakrishna* (1899), 24 Bom. 170 ; *Vishvanath Govind Deshmane v. Rambhat* (1890), 15 Bom. 148 ; *Lakshmandas Parashram v. Ganpatrao Krishna* (1884), 8 Bom. 365, see ante, p. 544.

¹ *Jan Mahomed v. Nurudin (Syed)* (1907), 32 Bom. 155 ; 9 Bom. L. R. 996.

² *Prayag Does Ji Varu, Mahant v. Tirumala Srinagacharlavaru* (1905), 28 Mad. 319 ; see *Damodarbhat v.*

Bhogilal Karsondas (1899), 24 Bom. 45 ; 1 Bom. L. R. 509.

³ Act V. of 1908, s. 93.

⁴ *Sajedur Raja Chowdhuri v. Gour Mohun Das Baishnav* (1897), 24 Calc. 418 ; Act V. of 1908 (Civil Procedure Code), s. 99.

⁵ *Manijan Bibee v. Khadem Hossein* (1904), 32 Calc. 273, at p. 276.

⁶ See Act XX. of 1863, s. 14, post, p. 558.

⁷ *Miyaji v. Ahmed Sahib (Sheikh)* (1908), 31 Mad. 212.

⁸ *Muhammed Jafar v. Muhammed Ibrahim* (1900), 24 Mad. 243.

⁹ *Chintaman Bajaji Dev v. Dhondo Ganesb Dev* (1888), 15 Bom. 612.

¹⁰ *Elayalwar Reddiar v. Namburumal Chettiar* (1899), 23 Mad. 298.

the performance of the ceremonies of worship of the idol who fails to perform the required service may be compelled to do so, and on refusal may be removed.¹

"Courts of equity in England have always allowed themselves some latitude in dealing with the trustees of a public charity who under a mistake have misapplied the funds of the institution, and we think that we can similarly allow ourselves some degree of latitude in dealing with the managers and *pujaris* ² of public Hindu temples who for a long time have been accustomed to deem themselves owners of the temples of which in law they are only trustees, managers, and priests, and to overlook the past while taking care that for the future the administration of the temple is placed on a sound footing. The judgment in the *Chinchwad* case,³ while it established the jurisdiction of the Courts to deal with the managers of public Hindu temples, and, if necessary, for the good of the religious endowment to remove them from their position as managers, did not, we think, intend to lay down a hard and fast rule that every manager of a shrine who arrogated to himself the position of owner should be removed from his trust. . . . Each case must, we think, be decided with reference to its own circumstances."⁴

Grounds for removal.

In the absence of fraud or dishonesty mere misconduct or mistake as to his position does not compel a Court to dismiss a manager.⁵ It may in some cases appoint a committee to supervise and control him, and frame a scheme for the management of the trust.⁶

On the removal of the manager a successor would then have to be appointed by the person entitled to make the appointment,⁷ and in default of such appointment the Court will appoint a fit successor, or will, if necessary, frame a scheme for the administration of the trust.

Appointment of successor.

As to the power of the Court to appoint new trustees or managers of public religious endowments in cases to which Act XX. of 1863 is applicable, namely, in the case of public religious endowments which might have been taken charge of by the Boards of Revenue under Bengal Regulations XIX. of 1810, and Madras Regulations VII. of 1817, see *post*, pp. 550–552.

Neither the Trustees and Mortgagees Powers Act ⁸ nor the Trustee Act ⁹ has any application to charitable or religious trusts.

¹ *Moresh Chunder Chuckerbutty v. Koylash Chunder Chuckerbutty* (1869), 11 W. R. C. R. 443.

² Priests.

³ *Chintaman Bajaji Dev v. Dhondo Ganes Dev* (1888), 15 Bom. 612.

⁴ *Damodar Bhatji v. Bhat Bhogilal Kasandas* (1896), 22 Bom. 493, at pp. 494, 495.

⁵ *Annaji Raghunath Gosavi v. Narayan Sitaram* (1896), 21 Bom. 556; *Sivasankama v. Vadagiri* (1889), 13 Mad. 6.

⁶ *Annaji Raghunath Gosavi v. Narayan Sitaram* (1896), 21 Bom. 556.

⁷ *Ante*, pp. 536 *et seq.* As to the form of decree when the person suing is entitled to nominate the successor, see *Sathappayyar v. Periasami* (1890), 14 Mad. 1.

⁸ XXVIII. of 1866. *Dinsha Manekji Petit (Sir) v. Jamselji Jijibhai (Sir)* (1908), 33 Bom. 509.

⁹ II. of 1882. *Gopu Kolandavelu Chetty v. Sami Royar* (1905), 28 Mad. 517.

Statutory provisions for the Superintendence of Charitable and Religious Endowments.

Bengal Regulation XIX. of 1810.

Bengal Regulation XIX. of 1810¹ vested in the Boards of Revenue and Commissioners the general superintendence of all lands granted for the support of mosques, Hindu temples, colleges, and for other pious and beneficial purposes, and of all public buildings, such as bridges, *sarais*,² *kattras*,³ and other edifices,⁴ and made provisions for giving effect to such superintendence.

Madras Regulation VII. of 1817.

By Madras Regulation VII. of 1817, framed under the above Regulation, the general superintendence of all endowments granted for the support of colleges, or for other beneficial purposes, and of all public buildings, such as bridges, *choultries*,⁵ or *chuttrums*,⁶ or other edifices in the Madras Presidency, were vested in the Madras Board of Revenue.⁷ The general superintendence of escheats was likewise vested in the Board of Revenue.⁸

So far as religious endowments are concerned, these Regulations have been repealed.⁹

These Regulations were intended to be supplemental to existing remedies.¹⁰ They apply to endowments created after the date of the Regulations, as well as to prior endowments.¹¹

Appropriation of endowments.

These Regulations¹² require the Board of Revenue,¹³ and in the case of Bengal the Board of Commissioners also, to take care that all endowments, the general superintendence of which are vested in them, are duly appropriated to the purpose for which they were destined by the Government or individual by whom such endowments were granted.

¹ Repealed in Assam by Act V. of 1897, and in the North-Western Provinces by Act VIII. of 1884.

² Buildings for the shelter and accommodation of travellers.

³ Market places.

⁴ S. 2.

⁵ Shelters for travellers.

⁶ Places where refreshment is given gratuitously, especially to Brahmins.

⁷ S. 2.

⁸ Ben. Reg. XIX. of 1810; Mad. Reg. VII. of 1817, s. 6.

⁹ *Post*, p. 552.

¹⁰ *Ponnambala Mudaliyar v. Varaguna Rama Pandia Chinnatambara* (1872), 7 Mad. H. C. 117.

¹¹ *Venkatachala Pillai v. Taluq Board, Saidapet* (1911), 34 Mad. 375; *Sivayya v. Rami Reddi* (1899), 22 Mad. 223.

¹² Ben. Reg. XIX. of 1810, s. 3; Mad. Reg. VII. of 1817, s. 3.

¹³ In Ajmere the Chief Commissioner discharges the functions of the Board of Revenue, Reg. III. of 1877, s. 3.

There were also provisions ¹ as to the repair of public edifices and the disposal of ruined buildings.

They are bound to prevent endowed lands from being ^{Misappropriation.} appropriated to private uses or in any other mode contrary to the intent and will of the donor.²

There were to be local agents, of whom the Collector was ^{Agents.} to be one, in each district.³

The duty of the agents is to ascertain and report the particulars of endowments, the names and particulars of the then trustees and managers, and all vacancies and casualties with full information as to the pretensions of claimants, and to recommend fit persons where the nomination vests in Government or any public officer.⁴

The Regulations give power to appoint trustees, managers, ^{Appointment of trustees.} and superintendents in those cases in which the nomination has usually rested with the present or former Government, or with a public officer, or of right appertains to Government, in consequence of no private individual being competent and entitled to make sufficient provision for the succession to the trust and management.⁵

Under this provision the Board of Revenue can appoint hereditary ^{Appointment of trustees.} trustees when such appointment does not interfere with any subsisting rights.⁶

This provision was not intended to limit the jurisdiction of the Courts to the cases contemplated in it, but rather to provide against the finality of erroneous orders that may be passed by the Board of Revenue under the Regulation.⁷

Section 15 of the Bengal Regulation and s. 14 of the Madras Regulation ^{Saving of private rights.} save the rights of individuals to recover by due course of law lands or buildings which had been appropriated under colour of the Regulations and compensation in damages for any loss or injury unduly sustained by them.

The Board cannot arbitrarily put an end to an arrangement permanently ^{Termination of arrangement, or superintendence.}

¹ Ben. Reg. XIX. of 1810, ss. 3, 4, and 6; Mad. Reg. VII. of 1817, ss. 3, 4.

² Ben. Reg. XIX. of 1810, s. 5; Mad. Reg. VII. of 1817, s. 5.

³ Ben. Reg. XIX. of 1810, ss. 8, 9; Mad. Reg. VII. of 1817, ss. 7, 8.

⁴ Ben. Reg. XIX. of 1810, ss. 10-13; Mad. Reg. VII. of 1817, ss. 9-12.

⁵ Ben. Reg. XIX. of 1810, s. 14;

Mad. Reg. VII. of 1817, s. 13. This cannot be done without first dismissing the existing trustee, *Venkatachala Pillai v. Taluk Board, Saidapet* (1911), 34 Mad. 375.

⁶ *Ganapathi Ayyar v. Vedavyasa Alasingha Bhattar* (Sri) (1906), 29 Mad. 534.

⁷ *Ponnambula Mudaliyar v. Varaguna Rama Pandia Chinnatambiar* (1872), 7 Mad. H. C. 117.

made by them, but may do so only for just and sufficient reasons.¹ The Board of Revenue can divest itself of its right of superintendence.²

Partial repeal
of Regula-
tions.

These regulations still apply to charitable endowments, except in Assam³ and the North-western provinces,⁴ but so far as religious endowments are concerned, they were repealed by the Religious Endowments Act,⁵ which is in force throughout India except in the Presidency towns and the Bombay Presidency, where it is in force in Kanara only.

Religious
Endowments
Act.

Transfer of
management
of endow-
ments to
Madras
Municipal
Council and
Madras Local
Boards.

It is competent to the Madras Board of Revenue, with the written consent of the Governor in Council and of the District Municipal Council, to make over to such municipal council the management and superintendence of any endowment vested in the Board by Madras Regulation VII. of 1817; and thereupon all powers and duties which attach to such Board of Revenue in respect thereof shall attach to such municipal council as if they had been specifically named in such regulation.⁶ There is a similar provision in the Madras Local Boards Act, 1884.⁷

Religious
Endowments
Act.

The scope of the Religious Endowments Act, 1863,⁸ is to be ascertained from the preamble which recites that it is expedient to relieve the Boards of Revenue, and the local agents in the Presidency of Fort William in Bengal, and the Presidency of Fort St. George, from the duties imposed on them by the above Regulations, "so far as these duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments."

¹ *Ganapathi Ayyar v. Vedavyasa Alasinga Bhattar (Sri)* (1906), 29 Mad. 534.

² *L. Venkatesa Nayudu v. Shatagopa Shri Shatagopa Swami (Shrivan)* (1872), 7 Mad. H. C. 77.

³ Act V. of 1897.

⁴ Act VIII. of 1884.

⁵ XX. of 1863.

⁶ Act IV. (M. C.) of 1884, s. 26 (2), *Chairman, Municipal Council of Rajahmundry v. Susurla Venkateswarlu* (1907), 31 Mad. 111.

⁷ Act V. (M. C.) of 1884, s. 51 (2); *Venkatachala Pillai v. Taluq Board, Saidapet* (1911), 34 Mad. 375.

⁸ XX. of 1863.

The Act applies to all public religious endowments for the support of which lands have been granted by preceding Governments of India and by individuals, whether they had been taken under the control of the Board of Revenue or not,¹ and whether they existed at the time of the passing of the Act or have been subsequently created.² It applies to religious endowments which might have been taken under the control of the above Regulations, if such Regulations had remained in force,³ and whether or not they were in existence at the time of the repeal of such Regulations.⁴

The Act only applies to public trusts. It has no application to private trusts,⁵ and only applies to certain religious trusts and endowments which have been or might be under the management of the Government.⁶

A public endowment for religious uses has been defined⁷ as "one which distributes its benefits to all men of all classes professing a defined form of religion : a similar endowment for pious and charitable purposes generally would include all members of the community who chose to avail themselves of the means afforded them by the appropriation ; every one would have an equal right to participate, and that at all time and at all seasons." To make a trust a public trust there must be an intention to confer a benefit either upon the people in general or upon a class of sectaries.⁸

The Act applies to endowments the funds for which have been raised by subscription.⁹

The provisions of the Religious Endowments Act (XX. of 1863) are as follows :—

In the case of every mosque, temple, or religious establishment subject to the above Regulations which was under the management of a trustee, manager, or superintendent, whose nomination did not vest in, nor was exercised by, or was subject to the confirmation of, the Government, or of any public officer,

Private trusts.

Public endowment.

Transfer of religious trust property to trustees.

¹ *Jan Ali v. Ram Nath Mundul* (1881), 8 Calc. 32 ; 9 C. L. R. 433 ; *Sheoratom Kunwari v. Ram Pargash* (1896), 18 All. 227 ; *Mahomed Athar v. Ramjan Khan* (1907), 34 Calc. 587.

² *Venkatachala Pillai v. Taluq Board, Saidapet* (1911), 34 Mad. 375.

³ See *Saturhuri Setaramaniya Charayulu v. Nanduri Seetapali* (1902), 26 Mad. 166, explaining *Muthu v. Gangathara* (1893), 17 Mad. 95 ; *Mahomed Athar v. Ramjan Khan* (1907), 34 Calc. 587.

⁴ *Sivayya v. Rami Reddi* (1899), 22 Mad. 223 ; *Venkatachala Pillai v. The Taluq Board, Saidapet* (1911), 34 Mad. 375.

⁵ See *Sathapayyar v. Periasami* (1890), 14 Mad. 1 (endowment for family of guru) ; *Ashgar Ali v.*

Delroos Banoo Begum (1877), 3 Calc. 325 ; S. C. in Court below, *Delroos Banoo Begum v. Ashgur Ally Khan (Nawab Syud)* (1875), 15 B. L. R. 167 ; 23 W. R. C. R. 453 ; *Protap Chandra Misser v. Brojonath Misser* (1891), 19 Calc. 275 (endowment for family idol).

⁶ *Kalee Churn Giri v. Golabi* (1878), 2 C. L. R. 129, at p. 131.

⁷ *Delroos Banoo Begum v. Ashgur Ally Khan (Nawab Syud)* (1875), 15 B. L. R. 167, at p. 184 ; 23 W. R. C. R. 453, at p. 454. See *Venkatachala Pillai v. Taluq Board, Saidapet* (1911), 34 Mad. 375, at pp. 381, 382.

⁸ See *Sathapayyar v. Periasami* (1890), 14 Mad. 1.

⁹ *Muhammad Siraj-ul-Haq v. Imam-ud-din* (1896), 19 All. 104. .

the local Government was required to transfer the property which was under the superintendence of the Board of Revenue to such manager, trustee, or superintendent.¹

Procedure
in case of
dispute as to
succession to
vacated
trusteeship.

When a dispute arises as to the succession to the office of any trustee, manager, or superintendent to whom the property has been so transferred,² the Civil Court may at the instance of any person interested in the mosque, temple, or religious establishment or in the performance of the worship or of the service thereof, or of the trusts relating thereto, appoint a manager to act until some other person has by suit established his right of succession to such office.³

A Collector can be appointed trustee under this provision.⁴

No appeal lies from an order made under this provision,⁵ but a High Court can revise such order.⁶

Rights,
powers, and
responsi-
bilities of
trustees, etc.,
to whom
charge trans-
ferred.

The rights, powers, and responsibilities of the trustee, manager, or superintendent to whom the property is so transferred, as well as the conditions of their appointment, election, and removal are the same as if the Act had not been passed except in respect of the liability to be sued under the Act.⁷ All the powers which might be exercised by any Board of Revenue or local agent for the recovery of the rent of land or other property so transferred may be exercised by any trustee, manager, or superintendent to whom such transfer is made.⁸

Appointment
of Com-
mittees.

In the case of every mosque, temple, or religious establishment to which the provisions of either of the above regulations were applicable and the nomination of the trustee, manager, or superintendent whereof was at the time of the passing of the Act vested in, or might be exercised by, the Government or any public officer or in which the nomination was subject to the confirmation of Government or any public officer,⁹ the

¹ S. 4. *Jusagheri Gossamiar v. Collector of Tanjore* (1870), 5 Mad. H. C. 334.

² *Ituni Panikkar v. Irani Nambudripad* (1881), 3 Mad. 401; *Gopala Ayyar v. Arunachallam Chetty* (1902), 26 Mad. 85.

³ S. 5. As to appeals, see *Sultan Ackeni Sahib v. Bava Malimiyar (Shaik)* (1879), 4 Mad. 295.

⁴ *Somasundara Mudaliar v. Vythilinga Mudaliar* (1896), 19 Mad. 285.

⁵ *Ibid.*

⁶ *Gopala Ayyar v. Arunachallam Chetty* (1902), 26 Mad. 85.

⁷ *Post*, pp. 558-562.

⁸ S. 6.

⁹ S. 3. See *Dhurrum Singh Mohunt v. Kissen Singh* (1881), 7 Cal. 767; 9 C. L. R. 410. The burden of proof is on the person alleging that the endowment is of the class mentioned in s. 3, *Ponduranga v. Nagappa* (1889), 12 Mad. 366.

Local Government was required once for all to appoint committees of three or more persons to exercise the powers¹ given to the Board of Revenues and local agents by the above Regulations.²

As to the duties and powers of such committees, see *post*, pp. 556, 557.

"It cannot be contended that, owing to the neglect of Government to carry out the duties imposed upon them by s. 7 of that Act, the Board of Revenue can be deemed to be still invested with the powers and duties which attached to the Board under the Regulations."³

The members of the said committee were to be appointed from among persons professing the religion for the purposes of which the mosque, temple, or other religious endowment was founded, or was then maintained, and in accordance, so far as could be ascertained, with the general wishes of those who were interested in the maintenance of such mosque, temple, or other religious establishment. The appointment of the committee was to be notified in the *Official Gazette*. In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government might cause an election to be held under such rules (not inconsistent with the provisions of this Act) as should be framed by such Local Government.⁴

Qualifications
for members
of such Com-
mittee.

Under s. 9 every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness, and no such member shall be removed except by order of the Civil Court as thereafter provided.⁵

Every
member to
be appointed
for life unless
removed for
misconduct,
etc.

A member of a committee can retire from his office of his own will.⁶

Retirement
of member.
Provisions for
filling up
vacancies.

Section 10.—Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided. The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day which shall not be later than three months

¹ *Ante*, pp. 550, 551.

² S. 7. As to giving consideration in return for votes, see *Krishnaswami Ayyangar v. Sivaswami Udayar* (1905), 29 Mad. 166.

³ *Mahomed v. Ganapati* (1889), 13 Mad. 277, at pp. 278, 279.

⁴ Act XX. of 1863, s. 9. See standing orders of Madras Board of Revenue, Vol. 1. chap. VI.

⁵ *Post*, p. 559.

⁶ *Tiruvengada Ayyangar v. Ranga-ayyengar* (1882), 6 Mad. 114.

from the date of such vacancy for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government; and whoever shall be then elected under the said rules shall be a member of the committee to fill such vacancy. If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy, or may order the vacancy to be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply, and if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

When the number is reduced to less than three, the remaining members cannot perform any of the functions of the original committee.¹

The Judge may appoint a new committee when the memberships are all vacant.²

There is no appeal from the exercise of the power given to the District Judge by this section.³

No member of committee to be trustee, etc., of mosque, etc., under charge of such committee.

No member of a committee can be or act also as a trustee, manager, or superintendent of the mosque, temple, or other religious establishment for the management of which such committee may have been appointed.

Transfer of property to committee.

On the appointment of the committee the property of the endowment was to be transferred to the committee.⁴ All the powers which might be exercised by any Board of Revenue or local agent for the recovery of the rent of land or other property so transferred can be exercised by the committee.⁵

The Act does not detail the powers and duties of the committee. They have apparently general powers of superintendence and control over the affairs of the endowment.⁶ "In exercising such general control, it is an unquestionable duty of theirs to see that the rents payable to the institutions are punctually collected and all steps legally necessary for their

¹ *Santhalwa v. Manjanna Shetty* (1910), 34 Mad. 1.

² *Mahomed Athor (Syed) v. Sultan Khan* (1900), 4 C. W. N. 527.

³ *Meenakshi Naidoo v. Subramanya Sastri* (1887), 14 I. A. 160; 11 Mad. 26.

⁴ *I.e.* the property which was

actually in the possession of the Board of Revenue when the Act was passed, *Ponduranga v. Nagappa* (1889), 12 Mad. 366, at p. 368.

⁵ Act XX. of 1863, s. 12.

⁶ See *Kaliyanaramayyar v. Mustak Shah Saheb* (1896), 19 Mad. 395, at p. 396.

collection are duly taken. In the performance of this duty, however, the procedure to be observed by them is to get the managers to make the collection and perform all acts necessary for the purpose." Taking leases in their own name, though not regular, is not absolutely illegal.¹

The duty of a *devastanam* ² committee consists, primarily, in seeing that its endowments are appropriated to their legitimate purposes and are not wasted. It is not a part of the duty of such a committee to interfere with the trustees in matters relating to rituals.³

The committee cannot alter the constitution of the temple management established by the Board, and appoint additional trustees where some or all of the trustees are hereditary. The Act does not confer on the committee power, except for good and sufficient cause, to add to the number of trustees sanctioned under an existing scheme even if such trustees are not hereditary.⁴

Additional trustees.

They may appoint new trustees when there is no hereditary trustee to add to the existing trustees, but this power, though discretionary, must, as in the case of all powers exercised by them, be exercised reasonably and in good faith, and may be controlled by a civil Court of original jurisdiction.⁵

New trustees.

The committee, or at least a majority thereof,⁶ has power to dismiss trustees and superintendents of temples and of pagodas ⁷ or to suspend them ⁸ for due cause and for due cause only. Such dismissal must be at a meeting and after something like a judicial inquiry.⁹

Dismissal of trustees, etc.

The procedure of committees should be governed by the rules applicable to regular corporations.¹⁰

Procedure.

They can without leave institute such suits as may be necessary for enforcing their powers,¹¹ but the trustee or manager is the person who is entitled to bring suits for the property.¹²

Suits.

The committee is not entitled to possession of the property of the endowment.¹³

Possession of property.

Such committee has no power over trustees of endowments, the appointment of whom is not vested in Government.¹⁴

Endowments not vested in Government.

¹ See *Kaliyanaramayyar v. Mustak Shah Sahib* (1896), 19 Mad. 395, at p. 397.

² Revenue applied to the support of a temple.

³ *Tiruvengadath Ayyangar v. Srinivasa Thathachariar* (1899), 22 Mad. 361.

⁴ *Ganapathi Ayyar v. Vedavyasa Alusinga Bhattar (Sri)* (1906), 29 Mad. 534.

⁵ *Davud Saiba (Sheikh) v. Hussein Saiba* (1893), 17 Mad. 212; Act II. of 1882 (Trusts), s. 49.

⁶ *Pandarungy Annachariyar v. Iyathory Mudaly* (1869), 4 Mad. H. C. 443.

⁷ *Chinna Rangaiyangar v. Subbraya Mudali* (1867), 3 Mad. H. C. 334.

⁸ *Seshadri Ayyangar v. Nataraja*

Ayyar (1898), 21 Mad. 179.

⁹ *Thandvaraya v. Subbayar* (1899), 23 Mad. 483.

¹⁰ *Anantanarayana Ayyar v. Kuttalam Pillai* (1899), 22 Mad. 481. As to a quorum, see *ibid.*

¹¹ See *L. Venkatas Naidu v. Sudagopasamy Iyer* (1869), 4 Mad. H. C. 404.

¹² *Sankamurti Mudaliar v. Chidumbara Nadan* (1893), 17 Mad. 143.

¹³ *Ponduranga v. Nagappa* (1889), 12 Mad. 366.

¹⁴ *K. Venkatabalakrishna Chettiyar v. Kaliyanaramaiyangar* (1869), 5 Mad. H. C. 48; *Ramiengar v. Gnana-sambanda Pandarasannada* (1867), *ibid.* 53.

Accounts of
receipts and
disburse-
ments.

The Act further provided—

“Section 13.—It shall be the duty of every trustee, manager, and superintendent of a mosque, temple, or religious establishment to which the provisions of this Act shall apply, to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple, or other religious establishment, and it shall be the duty of every committee of management appointed or acting under authority of this Act to require from every trustee, manager, and superintendent of such mosque, temple, or other religious establishment the production of such regular accounts of such receipts and disbursements, at least once in every year, and every such committee of management shall themselves keep such accounts thereof.”

Failure to submit accounts to the committee justifies the dismissal of the trustee.¹

Persons
interested
may singly
sue in case of
breach of
trust, etc.

“Section 14.—Any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or of the trusts relating thereto may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court, the trustees,² manager, or superintendent of such mosque, temple,³ or religious establishment, or the member of any committee appointed under this Act, for any misfeasance, breach of trust, or neglect of duty committed by such trustee,⁴ manager, superintendent, or member of such committee⁵ in respect of the trusts vested in or confided to them respectively, and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent, or member of a committee, and may decree damages and costs against such trustee,

¹ *Anantanarayana Ayyar v. Kuttiam Pillai* (1899), 22 Mad. 481.

² Even if he be an hereditary trustee, *Natesa v. Ganapati* (1890), 14 Mad. 103; *Fakurudin Sahib v. Acken Sahib* (1880), 2 Mad. 197.

³ This would include a *de facto*, as well as a *de jure* manager or superintendent, see *Muhammad Siraj-ul-haq v. Imam-ud-din* (1896), 19 All. 104, but would have no application

to a mere trespasser.

⁴ See *Elayahwar Reddiar v. Namburumal Chettiar* (1899), 23 Mad. 298.

⁵ The appointment of a Sivite to be trustee of a Vishnuvite temple is not a breach of trust by the committee, *Gandavathera Ayyangar v. Devanayya Mudali* (1883), 7 Mad. 222.

manager, superintendent, or member of a committee, and may also direct the removal of such trustee, manager, superintendent, or member of a committee."

This section is not confined to those endowments the nomination to which has been exercised by or had vested in the Board of Revenue under the above Regulations.¹ It is generally applicable to all public religious endowments, whenever created,² to which the above-named Regulations would have been applicable, if they had not been repealed to the extent that they have been repealed. In one case³ it was held that this section, although in its terms it appears to be more general than the earlier sections, applies in fact only to the same religious trusts to which the rest of the Act applies.⁴

Suits under this section can only be brought against the persons described in the section.⁵ A suit under the section cannot be brought against a person to whom the manager has by a breach of trust transferred the property of the endowment.⁶

Against whom
suit can be
brought
under Act.

The suit may be brought in *forma pauperis*.⁷

Pauper suit.

Provided that the cause of action be as specified in the section, it is competent to the Court in such suit to give such relief beyond the relief specified in the section, as may be ancillary to the relief specified, as, for instance, to appoint new trustees and frame a scheme,⁸ or to make a declaration that property belongs to an institution,⁹ or to deprive the

Further relief.

¹ *Sheoratan Kunwari v. Ram Pargash* (1896), 18 All. 227, at p. 231, differing from *Raghubar Dial v. Kesho Ramanuj Das* (1888), 11 All. 18 at p. 23; *Ganes Sing v. Ramgopal Sing* (1870), 5 B. L. R. App. 55, and cases ante, p. 553.

² *Sivayya v. Rami Reddi* (1899), 22 Mad. 223; *Saturluri Seetaramanuja Charyulu v. Nanduri Seetapati* (1902), 26 Mad. 166; *Dhurum Singh Mohunt v. Kissen Singh* (1881), 7 Cal. 767, at p. 770; 9 C. L. R. 410, at p. 413; *Muhammad Siraj-ul-Haq v. Imam-uddin* (1896), 19 All. 104; *Mahomed Athar v. Ramjan Khan* (1907), 34 Cal. 587; *Fakurudin Sahib v. Ackeni Sahib* (1880), 2 Mad. 197. See, however, *Jan Ali v. Ram Nath Mundul* (1881), 8 Cal. 32; 9 C. L. R. 433.

³ *Kalee Churn Giri v. Golabi* (1878), 2 C. L. R. 128, at p. 131, following *Panchcourrie Mall v. Chumroolall* (1878), 3 Cal. 563; 2 C. L. R. 121.

⁴ Ante, p. 553.

⁵ See ante, p. 558, notes 2, 3.

⁶ *Sivayya v. Rami Reddi* (1899),

22 Mad. 223.

⁷ *Gurusami Chetti v. Krishnasami Naikar* (1901), 24 Mad. 419.

⁸ *Narayana Ayyar v. Kumarasami Mudaliar* (1899), 23 Mad. 537; see, however, *Protap Chandra Misser v. Brojonath Misser* (1891), 19 Cal. 275. There is a difference of opinion as to whether the Court has under this section power to appoint a trustee. In *Sivayya v. Rami Reddi* (1899), 22 Mad. 223, at p. 227, Sheppard, J., considered that such power did not exist. In *Sheoratan Kunwari v. Ram Pargash* (1892), 18 All. 227, at p. 232, the Allahabad High Court held that the Court had such power. It is submitted that on the removal of a manager or trustee in a suit brought under this section the person ordinarily entitled to nominate a successor does not lose his right, but that in case of his refusing or neglecting to exercise such right the Court would have to make an appointment.

⁹ *Muhammad Jafar v. Muhammad Ibrahim* (1900), 24 Mad. 243.

defendants of the trusteeship or a right of puja,¹ or to restrain the superintendent from removing a holy book from the temple.²

The Court can, when directing the removal of a trustee, order a person competent to appoint a new trustee to make such appointment and to direct the trustee removed to surrender possession of property and pay any damages decreed to the new trustee to be appointed.³

Nature of order.

Grounds of removal.

An order under s. 14 should be mandatory, not merely prohibitory.⁴

Mere error of judgment does not disqualify a member of a *devasthanam* committee. To justify the removal of such an office-holder, it must be shown that the further holding by him of the office is incompatible with the interests of the temple under the charge of the committee of which he is a member.⁵ Cf. *ante*, pp. 548, 549.

The Act has no application to any suits other than those specified in s. 14,⁶ as, for instance—

Suits to which Act has no application.

(a) A suit to establish a right to share in the management of a temple.⁷

(b) A suit brought by the *dharmakarta* of a temple and one of its worshippers to compel the defendant as heir of the late manager to make good out of the property inherited by him the deficiency in the *Devasthanam* funds caused by breach of trust and misappropriation by the late manager.⁸

(c) A suit for the removal of a *mohunt*, and for the appointment of the plaintiff in his place.⁹

(d) A suit by a temple officer for wrongful dismissal.¹⁰

(e) A suit for recovery of trust property¹¹ from a transferee even where the transaction amounted to a breach of trust.¹²

(f) A claim as beneficiary under a deed of trust to a specified share which had been allotted to the claimant thereby.¹³

(g) A claim by the settlor claiming possession of the property on the ground that the trust had not been carried out.¹⁴

Suit independent of the Act.

"The Act,¹⁵ while it empowered persons to sue whose right to sue independently of the Act may be doubtful, did not deprive any one of the right to sue, which he may have independently of the Act."¹⁶

¹ *Natesa v. Ganapati* (1890), 14 Mad. 103; in that case the suspension was withdrawn on terms.

² *Dhurrum Singh v. Kissen Singh* (1881), 7 Cal. 767; 9 C. L. R. 410.

³ *Miyaji v. Ahmed Sahib (Sheikh)* (1908), 31 Mad. 212; *Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran* (1887), 10 Mad. 375, at p. 508.

⁴ *Dhurrum Singh v. Kissen Singh* (1881), 7 Cal. 767; 9 C. L. R. 410.

⁵ *Tiruvengadath Ayyangar v. Srinivasa Thathachariar* (1899), 22 Mad. 361.

⁶ *Ante*, p. 558.

⁷ *Agri Sharma Embrandri v. Vistnu Embrandri* (1886), 3 Mad. H. C. 198.

⁸ *Y. K. K. A. M. R. C. Jeyangarulavaru v. Hati R. M. M. Durma*

Doseji (Sri) (1868), 4 Mad. H. C. 2.

⁹ *Kishore Bose Mohunt v. Kalee Churn Giree* (1874), 22 W. R. C. R. 364.

¹⁰ *Amin Sahib (Syed) v. Ibram Sahib* (1868), 4 Mad. H. C. 112.

¹¹ *Mahalinga Rau v. Veraba Ghosami* (1881), 4 Mad. 157; *Virasami Nayudu v. Subba Rau* (1882), 6 Mad. 54.

¹² *Sivayya v. Rami Reddi* (1899), 22 Mad. 223.

¹³ *Kalub Hossein (Hajee) v. Mehrum Beebee (Mussumat)* (1872), 4 N. W. P. 155.

¹⁴ *Hidait-oon-nissa v. Afzul Hossein (Syud)* (1870), 2 N. W. P. 420.

¹⁵ XX. of 1863.

¹⁶ *Kalub Hossein (Hajee) v. Mehrum Beebee (Mussumat)* (1872), 4 N. W. P.

Section 15.—“The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary or a direct or immediate interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.¹ Any person having a right of attendance, or having been in the habit of attending at the performance of the worship or service of any mosque, temple, or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.”²

Nature of interest entitling person to sue.

The Court has power to refer to arbitration matter in difference³ in suits or proceedings instituted under the Act.⁴

Reference to arbitration.

Section 18 (as amended by Act VII. of 1870) is as follows : “No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.”

Application for leave to institute suit.

The Court on the perusal of the application shall determine whether there are sufficient *prima facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

“If the Court shall be of opinion that the suit has been for the benefit of the trust, and⁵ that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.”

Costs.

An application for leave to sue should be duly verified and presented either by the applicant in person or by his pleader.⁶

Verification.

It is not necessary to give notice to the person whom it is intended to sue.⁷

Notice.

A District Judge acting under s. 18 of Act XX. of 1863 can make inquiries, and is not bound to decide on a bare perusal of the application for leave to sue.⁸

Inquiries.

155, at p. 158; *Narayana Ayyar v. Kumarasami Mudaliar* (1899), 23 Mad. 537; *Puddolab Roy v. Ram Gopal Chatterjee* (1882), 9 Cal. 133; 11 C. L. R. 33.

26 Mad. 361.

¹ See *Doyal Chund Mullick v. Keramat Ali* (1869), 12 W. R. C. R. 382.

⁴ Act XX. of 1863, ss. 16, 17. *Perumal Naik v. Saminatha Pillai* (1896), 19 Mad. 498.

⁵ This does not mean “or:” *Nurendro Narain Roy v. Ishan Chunder Sen* (1874), 22 W. R. C. R. 22.

² *Narayana Ayyar v. Kumarasami Mudaliar* (1899), 23 Mad. 537.

⁶ *Amdoo Miyan v. Muhammad Dayud Khan Bahadur* (1901), 24 Mad. 686.

³ But not the whole suit, *Karedla Vijayaraghava Perumalayya Naidu v. Yemavarapu Sitaramayya* (1902),

⁷ *Ibid.*

⁸ *Ramanathan Chethar v. Ananthunarayana Aiyar* (1909), 33 Mad. 412.

If the suit instituted differs materially from the suit for which sanction was given, the plaint may properly be rejected.¹

Appeal.

Suits in High Court.

No appeal lies from an order giving or refusing leave made under s. 18.² It has been held that these sections do not apply to a suit brought under the ordinary original civil jurisdiction of a High Court,³ and that therefore no sanction is necessary for such suit.

Court may require accounts of trust to be filled.

Section 19.—“Before giving leave for institution of a suit or after leave has been given, before any other proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager, or superintendent or any member of a committee, as the case may be, to file in Court the accounts of the trust or such part thereof as to the Court may seem necessary.”

Criminal proceedings.

Neither the Act nor any proceedings thereunder exclude the ordinary criminal law.⁴

Endowments partly for religious and partly for secular purposes.

Section 21.—“In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character, or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses the Board of Revenue, before transferring to any trustee, manager, or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses, and what portion shall be transferred to the superintendence of the trustee, manager, or superintendent,

¹ *Srinivasa v. Venkata* (1887), 11 Mad. 148.

² *Civil Revision Petition* 101 of 1882, 10 Mad. 98, note; *In re Venkateswara* (1886), 10 Mad. 98; *Kaviraja Sundara Murti Pillai v. Nalla Naikan Pillai* (1886), 3 Mad. 93; *Kalub Hossein (Hajee) v. Ali Hossein* (1872), 4 N. W. P. 3; *Delrus Banoo Begum v. Abdur Ruhman (Hadjee)* (1874), 21 W. R. C. R. 368; *Protap Chandra Misser v. Brojonath Misser* (1891), 19 Calc. 275; *Kazem Ali v. Azim Ali Khan* (1891), 18 Calc. 382; *Mozaffer Ali v. Hedayet Hossain* (1907), 34 Calc. 584. As to an appeal

from an order for costs, see *Ramakissoor Doseji v. Sriranga Charlu* (1898), 21 Mad. 421.

³ *Annasami Pillai v. Ramakrishna Mudaliar* (1900), 24 Mad. 219, at pp. 231, 232; see *Panchcourie Mull v. Chumroelall* (1878), 3 Calc. 563; 2 C. L. R. 121. If the case comes within the terms of the section, and the endowment be one to which the Act applies there seems to be no reason why the section should not apply even to a suit brought in a Presidency town.

⁴ (1876), 1 Mad. 54. Act XX. of 1863, s. 20.

or of the committee, and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager, or superintendent, or of the committee, and made payable to the said Board or the local agents for secular uses as aforesaid. In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred."

Section 22.—"Except as provided in this Act, it shall not be lawful for any Government in India, or for any officer of any Government in his official character to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple, or other religious establishment, or to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple, or other religious establishment, or to nominate or appoint any trustee, manager, or superintendent thereof, or to be in any way concerned therewith." ¹

There is also power given by the Charitable Endowments Act, 1890,² to the Local Government on the application of the person acting in the administration of a trust for a charitable purpose, or his executor or administrator or of a person proposing to apply property in trust for such a purpose, to vest the property in the Treasurer of Charitable Endowments; ³ but such treasurer cannot, as such, act in the administration of the trust.⁴

¹ Such appointment, if made, is void, see *Mahomed v. Ganapati* (1889), 13 Mad. 277.

² Act VI. of 1890.

³ *Ibid.*, s. 6.

⁴ *Ibid.*, s. 8.

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